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ABSTRACT

A 2- or 3-day activity for middle and high school students, this unit is designed to familiarize students with the concept and reality of tribal governments as they exist today in American Indian tribes. Objectives are to enable students to: (1) become aware that American Indian tribal governments, people, and reservations exist in the United States and in the State of Wisconsin; (2) be able to discuss the relationship that exists between tribal and other forms of government in American society; (3) learn aspects of U.S. and Wisconsin history that may be new to them; (4) begin to appreciate Native American perspectives and concerns; and (5) increase their ability to share information, raise questions, and comment on others' information. Materials include student worksheets, student resource sheets, and teacher resource sheets. A procedure for utilizing the materials and teaching the activity is suggested. (DB)

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American Indian Tribal Governments

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AMERICAN INDIAN TRIBAL GOVERNMENTS

**A two- or three-day activity
for students in grades 8-12 in
American government, civics, political
science, and other social studies courses,
particularly those in Wisconsin schools.**

**Prepared by the
Department of Human Relations
Herman T. Moody, Director
MADISON METROPOLITAN SCHOOL DISTRICT
Donald T. Hafeman, Superintendent**

Bulletin no. 6486

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Foreword

This activity has been designed for use with middle and high school students; Indian or non-Indian; in American history, civics, or government courses. Its purpose is to familiarize students with the concept and reality of tribal governments as they exist today in American Indian tribes. It may also be used with groups of adults for the same purpose.

The activity can be presented with little prior preparation on the part of the teacher, although it is recommended that it be studied carefully by the teacher prior to its use in the classroom. A bibliography of a few basic volumes on American Indian history and government is included for teachers wishing to add more preparation and knowledge to its use (see Teacher Resource Sheet #12).

A word about the format of this activity: All materials listed on the first pages are included in the activity with the exception of the tapes or records (their use is optional). Teacher Resource Sheets are primarily for the use of the instructor, although any of them can be shared with students if deemed helpful and appropriate. Student Resource Sheets are to be reproduced for students and can be collected and used for more than one class. Student Worksheets, on the other hand, are consumables--i.e., for students to use, write on, mark up, etc. They need to be reproduced each time the activity is taught, if the suggested procedure is followed.

Each part of the activity is included with a particular objective in mind; therefore, it is recommended that the activity be taught in its entirety. In reality, it was developed as the fourth in a series of six activities making up a unit entitled "American Indian Tribal Sovereignty." The entire unit may be obtained by contacting the Department of Human Relations, Madison Metropolitan School District, 545 West Dayton Street, Madison, WI 53703.

We wish to extend our appreciation to Mary Rehwald, a former high school teacher in the Madison Metropolitan School District, who researched and developed the original framework for the Indian sovereignty unit and wrote the first draft of the student reading "History of Indian Tribal Governments." John Beaudin (Ojibwe) also assisted in the preliminary research for the unit.

We wish to thank Buck Martin (Stockbridge-Munsee), whose idea it was to create a separate activity on Indian Tribal Government for use in all Wisconsin schools. Rick St. Germaine (Ojibwe), Frank Barber (Ojibwe), Nela Stacy (Winnebago), and Dorothy Davids (Stockbridge-Munsee) assisted us in getting support and feedback from members of the Wisconsin Indian Language and Culture Education Board as well as from the chairpersons of the eleven Wisconsin tribes.

Special thanks go to the following for their helpful comments on the first draft of the Indian government activity: John Beaudin (Ojibwe); Dorothy Davids (Stockbridge-Munsee); Ada Deer (Menominee); Carol Haro, Lac du Flambeau education coordinator; Michael Hartoonian, DPI social studies consultant; and Buck Martin (Stockbridge-Munsee).

A final and warm word of gratitude goes to Susan Glade, who typed the first draft, and Karen Blofeld, who typed the final revision of the activity.

Ruth Gudinas, Editor
October 1983

Using American Indian Tribal Governments

GRADES: 8 - 12

TIME: Two 50-minute class periods

OBJECTIVES: Students will

become aware that American Indian tribal governments, people, and reservations exist in the United States and in the State of Wisconsin.

be able to discuss the relationship that exists between tribal and other forms of government in American society.

learn some aspects of American and Wisconsin history which they may not have known about previously and how they impacted on Indian tribal governments.

begin to appreciate Native American perspectives in American and Wisconsin history and civics.

become familiar with several areas of concern with which tribal governments and Indian people must deal on a daily basis.

increase their ability to share information, listen to others, raise questions, and comment on others' information.

MATERIALS: Student Worksheets

1. History of American Indian Tribal Governments
2. American Indian Governments--Thought Questions
3. American Indian Tribal Governments--Quiz

Student Resource Sheets

1. Introduction to American Indian Governments
2. Indian Lands in Wisconsin in the Early 1800s (map)
3. Indian Lands in Wisconsin Today (map)
4. Bad River and Red Cliff Indian Reservations (map)

Teacher Resource Sheets

1. Seven Basic Concepts of Political Science
2. Tribal Government
3. Federal/Indian Relationship
4. Tribal Jurisdiction
5. Abrogation of Indian Treaties
6. Indian Claims
7. Indian Sovereignty--A Perspective
8. Relationship of Tribal Governments to Federal, State, and Other Governments (transparency)
9. Guide to Student Readings/Reports
#10. American Indian Governments--Hints for Teachers
#11. American Indian Tribal Governments--Quiz Key
#12. Selected Readings

Cassette Tape/Record

"My Country 'Tis of Thy People are Dying" sung by Buffy Ste. Marie.

"Tribal Governments," Cassette #2 in Woodland Indians (available from WHA Radio, 821 University Avenue, Madison, WI 53706).

PROCEDURE:

1. Using Teacher Resource Sheet #1, review with students the seven basic concepts of political science. Since many of these concepts are implicit in the readings in this unit, such a review will help students "bridge" between their basic knowledge of government and what they will learn about American Indian tribal governments.

2. Optional: Play the song "My Country 'Tis of Thy People Are Dying." Have students listen carefully to the words; at the end, ask them to identify the main points of the song.

3. Continue the discussion by emphasizing the fact that the spirituality and culture of a people are dependent on several things: (a) their health, (b) economic freedom to live as they choose, (c) good relations with those around them, (d) their ability to live on land that sustains them, and (e) their belief that they can trust the words of the treaties that they sign with other nations (in this case, the United States). Discuss each of these points with care, using Teacher Resource Sheets #2-#7 as a base of information for yourself. You may want to share with students some particularly relevant sections of the articles.

4. Introduce the topic of Indian tribal governments by having students name the different levels of government which they know: federal or national, state, county, town. If an Indian student mentions tribal government, use that as your lead-in. In any event, tell students that they are going to learn about another kind of government in the United States and in our state--one that usually gets left out of civics and other books on government. Pass out Student Resource Sheet #1 and read it with students. Using your transparency of Teacher Resource Sheet #8 at this time, show the relationship of tribal governments to various other forms of government with which students are more familiar.

5. Hand out copies of Student Worksheet #1 to students, telling them that they will now go into a little more detail on Indian governments. "Walk" them through the copy so they become familiar with the five major topics to be studied.

6. Divide students into seven groups by having them count off or by grouping them according to reading and reporting ability. Using Teacher Resource Sheet #9, assign each group of students one of each of the first seven sections of the reading. (These are **not** the same as the five main topics.) Give them time to read the section (alone or aloud), then underline significant points **individually**.

7. Give students copies of Student Worksheet #2 and allow some minutes for them to respond to the questions. Teacher Resource Sheet #10 includes suggestions you might use to encourage thoughtful answers to the questions.

8. For a few minutes have students share their answers in the group. Tell them to come to agreement on answers that will be reported to the entire class. Be sure that all students contribute their answers. If consensus cannot be reached within any group, tell them not to worry; they can share the disagreement with the rest of the class and let them decide what the best response should be.

9. Have each group select a reporter for the general sharing session. This will allow one student to prepare the report on his/her section and get the appropriate materials from you. Before sharing begins, check to make sure that reporters have all materials, know how to use necessary equipment, and so forth.

10. Prepare a general sharing session by arranging a "fish bowl": reporters sit in a small circle with one empty chair or desk; the rest of the students sit around the outside facing the circle of reporters. Tell students that those in the outer circle should feel free to ask questions, make comments, and request clarifications, but to do so they must take the empty chair in the inner circle. After their comment has been made or their question answered, they must return to their original place.

11. Review the points made about Indian tribal governments in the introduction **or** play the module "Tribal Governments" on Cassette #2 of the Woodland Indian series. Then have reporters, one by one and in the order of the reading, report on their section by sharing their group's agreed-upon answers to each question. If no agreement was reached, the report should tell the group what the issues were and ask for help. Remind students who have comments to take the empty place in the fishbowl.

12. When the reporting is finished, take a few minutes to review and summarize the points made in Section V of the reading. You might want to make some clarifications or corrections at this time also.

13. If time permits, have students try the quiz on Student Worksheet #3 or use it as a final review of the activities.

Teacher Resource Sheet #1:
Seven Basic Concepts of Political Science[1]

Political System - A political system is a complex of processes and institutions which allocates resources, power, and values in an authoritative manner.

Legitimacy - Legitimacy is an acceptance by the people of a society of its governmental system.

Decision Making - Decision making refers to who gets what, when, and how . . . decision making deals extensively with the question, "Who rules?"

Law - People in every society create laws that reflect their philosophy and ideology. Penalties and sanctions are provided for violations of the law.

Institutions - Institutions are part of the formal political power of government and are usually established to meet the needs of society.

Interdependence - There is a division of responsibility at all levels of government: local, state, national, and international.

Citizenship - Citizenship involves varying degrees of obligations and privileges, depending upon the form of government.

Question: Why do people form political systems?

Answer: Any political institution must meet the need for

1. order
2. the allocation of resources, power, and values
3. conflict resolution
4. legitimacy

People's values differ regarding both the principles they believe in and the public policies they prefer. Whose preferences shall prevail and whose shall be ignored? Whose shall be partially satisfied? In many cases, promoting one value necessarily excludes others. These questions are decided through the political process. In the absence of a political system, there is anarchy; the decision-making process becomes chaotic. In such a situation there would be no freedom and no security.

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1. From Descriptors for Political Understanding: A Guide to Asking Questions About Learning Related to Political Literacy in Wisconsin Schools, K-12 (Wisconsin Social Studies Curriculum Study Committee), pp. 3-4.

When the people obey the rules made by the authorities, they do so because (1) they consider the process by which the rules came into being to be legitimate, (2) they generally consider the rules themselves to be fair and necessary, and (3) they believe that the people who made the rules have the legitimate right to do so. No government has the power to police all its citizens 24 hours a day to exact compliance with the laws. A vast majority of citizens must voluntarily comply with the laws if the political system is to survive. If there are laws or rules that the people do not accept, they are usually changed.

Teacher Resource Sheet #2:
Tribal Government

Self-government is not a new or radical idea. Rather, it is one of the oldest staple ingredients of the American way of life. Indians in this country enjoyed self-government long before European immigrants who came to these shores did. It took the white colonists north of the Rio Grande about 170 years to rid themselves of the traditional pattern of the divine right of kings . . . and to substitute the less efficient but more satisfying Indian pattern of self-government. South of the Rio Grande the process took more than three centuries, and there are some who are still skeptical as to the completeness of the shift.

Felix Cohen
The Legal Conscience

Many people look on Indian reservations as internment camps in which Indians were confined and forgotten by their European conquerors. Others see the reservations as wildlife sanctuaries where a threatened species of mankind is protected for future generations of superior species to behold. And others view the reservations as temporary holding pens where atavistic Indians are allowed to live out fantasies of a long-dead lifestyle until such time they can be willingly or unwillingly brought into the "mainstream of American life."

In truth, Indian reservations are the land base for tribes of people who have exercised sovereignty from time immemorial, and who refuse to surrender their right of self-government. Indian reservations are the homelands of Indian tribes, and Indian tribes are legal "dependent sovereign" nations within the nation.

Tribal governments were recognized as nations by the earliest Europeans that dealt with them--the Dutch, the Spanish, the French and the English. Yet, in spite of that inherent sovereignty, and in spite of its repeated affirmation in old and recent United States law, many Americans believe that tribal governments were created by treaties and conferred upon Indians as a benevolent dispensation of federal law. The reverse is true: the tribal government entered into treaties and conferred certain rights to the colonials, and later to the United States.

The United States makes treaties only with other governments, and for over 200 years has recognized the governments of Indian nations and tribes. In relating to tribal governments, the federal government acts under authority of provisions of the Constitution. In Article I, Section 8, the Constitution states: "The Congress shall have power . . . to regulate commerce with foreign nations, among the several states, and with Indian tribes."

The relationship between the Indian nations and the United States government is unique in a number of respects. First, the Indians are the only group specifically identified in the Constitution. Persons unfamiliar with Indian law mistake this distinction as one of a racial nature. Such is not the case. Indian tribes are distinct political entities--governments with executive, legislative, and judicial powers. Members of the tribes may be citizens of both their Indian nation and the United States.

Many of today's tribal governments have been shaped or influenced by the Indian Reorganization Act. In 1934, Congress enacted the Indian Reorganization **Act** in an effort to correct many destructive federal Indian laws enacted previously, and to provide for the "formalization" of the tribal governments through written constitutions and charters.

While many of the tribes adopted a written constitutional form of government as provided for in IRA, others did not. However, a tribe's right to retain a traditional form of government with an unwritten constitution has been reaffirmed many times by the Supreme Court. The Pueblos and the Iroquois are examples of federally recognized tribes with traditional constitutions. It must also be noted that the Cherokees, Choctaws, Creeks and Chickasaws had written constitutions and legal codes in force as early as 1830.

Dramatic improvements have taken place as tribal governments have begun to assume legal, contractual, and administrative responsibilities for the many-sided aspects of modern economic and social concerns. Tribal governments are improving their courts and expanding their judicial role and are more actively encouraging and regulating economic enterprise. They are taking greater initiatives to protect their natural resources and environment and to deliver educational and social services to their people.

The tribal governments have not always had the opportunity to perform many of their governmental functions. The Bureau of Indian Affairs is the federal agency with the greatest responsibility to deliver services and exercise the trust responsibility inherent in the federal-tribal relationship. And, over the years, the BIA has been guilty of a kind of paternalism which one senator described as "the most subtle and sophisticated form of tyranny," and the Supreme Court described as "bureaucratic imperialism."

The Economic Opportunity Act of 1964 acted indirectly to break the BIA monopoly over funding sources and services to Indians. As an alternative to the BIA, the Act provided an opportunity for tribal governments to develop versatility and administrative initiative. And in 1973, the Indian Self-Determination Act provided the administrative mechanisms for the tribes to contract for and fully administer federal funds for services that were previously delivered solely by the bureaucracy. The tribes have demonstrated repeatedly that they are more effective administrators of their own programs than their federal tutors and administrative overseers.

This local control and exercise of sovereignty with federal aid is akin to what Federal Revenue Sharing is to state sovereignty. But there are those who, through ignorance or prejudice, ask the question, "If tribes want to be self-governing and self-sufficient, why do they ask for federal subsidy?" The answer is quite simple when one compares the 287 tribal governments with the more than 80,000 state, county and municipal governments in the United States.

As governments, the tribes receive assistance on the same basis that state and other local governments receive federal subsidies for road and school construction, for impact aid in education, for public transportation, for urban renewal, and for other projects and services.

The tribes receive federal assistance for many of the same reasons that private industries receive assistance in form of tax relief, direct funds for research and development, and payroll and overhead subsidies for participating in job training programs.

Tribal governments are often painted in derogatory terms by anti-tribal groups, who describe them as inept and corrupt. A quote from The Legal Conscience by Felix Cohen, who is known among Indians as "the father of modern Indian law," probably best answers that charge:

"Not all who speak of self-government mean the same thing by the term. Therefore, let me say at the outset that by self-government I mean that form of government in which decisions are made not by the people who are wisest, or ablest, or closest to some throne in Washington or in Heaven, but rather by the people who are most directly affected by the decisions. I think that if we conceive of self-government in these matter-of-fact terms, we may avoid much confusion.

"Let us admit that self-government includes graft, corruption, and the making of decisions by inexpert minds. Certainly these are features of self-government in white cities and counties, and so we ought not be scared out of our wits if somebody jumps up in the middle of a discussion of Indian self-government and shouts 'graft' or 'corruption.'"

The tradition of self-government is not a foreign idea but one of the native concepts that guided the founding of the United States. As from time immemorial, tribes will continue to be permanent ongoing political institutions exercising the basic powers of government necessary to fulfill the needs of tribal members.

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Teacher Resource Sheet #3:
Federal/Indian Relationship

The scope of the trust responsibility extends beyond real or personal property which is held in trust. The U.S. has the obligation to provide services, and to take other appropriate action necessary to protect tribal self-government. The doctrine may also include a duty to provide a level of services to Indians generally equal to those services provided by states to their citizens. These conclusions flow from the basic notion that the trust responsibility is a general obligation which is not limited to specific provision in treaties, executive orders, or statutes: once the trust relationship has been assumed, administrative action is governed by the same high duty which is imposed on a private trustee.

American Indian Policy Review Commission
of the United States Congress, 1977

The federal-Indian trust relationship is one of the most important concepts underlying Indian law. The relationship was not created by a single document nor is its scope defined in any one place. In the historic Cherokee Nation v. Georgia decision of the Supreme Court, the trust relationship was described as "perhaps unlike that of any other two peoples in existence."

The American Indian Policy Review Commission, a two-year, $2.5 million study commissioned by Congress in 1975, defined the relationship as "an established legal obligation which requires the United States to protect and enhance Indian trust resources and tribal self-government, and to provide economic and social programs necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society." Whatever the source of definition, protection is the key word in defining the federal-Indian relationship.

Despite the importance of the federal-Indian trust relationship, it is not always easy to clearly identify the origin of the federal obligation. Specific treaties can be identified as the source for some tribes. For others, executive agreements, legislation, and court decisions create the trust relationship. Under U.S. law it is not necessary to use the actual term to create a legally enforceable trust duty.

Three broad areas can be identified into which trust responsibilities fall: 1) protection of Indian trust property; 2) protection of the Indian right to self-government; and 3) provision of those social, medical, and educational services for survival and advancement of the Indian tribes.

United States law is very clear in the federal government's strict obligation to protect Indian trust property, using the highest standards of good faith, honesty, skill, and diligence. This means that the Bureau of Indian Affairs or any other agency of the Executive must exercise the highest standards in such areas as management and accounting for Indian trust funds, and protection and management of Indian lands and natural resources.

There is considerable support in both law and history for the concept that the trust relationship includes the obligation of the U.S. government to protect and encourage the Indian rights to self-government.

The federal government is obligated to provide social, medical, and educational services to many Indian tribes because of treaty agreements. Congress, however, has recognized that there are federal service obligations beyond those required by treaties. For example, the Indian Self-Determination and Education Assistance Act of 1975 spoke of "Federal responsibility for and assistance to education of Indian children." The Snyder Act of 1921 made the Department of the Interior responsible for a sweeping list of educational, medical, and social services to Indians.

Perhaps the greatest misconception surrounding the federal-Indian trust relationship is that the Bureau of Indian Affairs is the only federal agency with special duties relating to Indian affairs--the sole trustee. This is incorrect. Stemming from the Constitution itself, it is the U.S. Congress which is the trustee. The constitutional powers of Congress to ratify treaties and regulate commerce with Indian tribes provide the legal basis for this unique congressional duty. The Congress has, however, delegated the day-to-day functions of implementing the trust responsibilities to various federal executive agencies. While Congress has placed the major responsibility for Indian matters in the Interior Department, it has also delegated certain duties to other agencies such as DHEW and Labor.

The individual Indian is of course the recipient of various services and protection provided under the trust relationship and, as such, is a beneficiary. Many of these services and protections extend to Indians whether they live on or off the reservation. Generally, however, both the federal government and Indians agree that the true beneficiary of the trust relationship is the Indian tribe. Indian individuals receive benefits indirectly, but only as members of a federally recognized tribe.

The federal-Indian trust relationship is treasured and guarded by the Indian tribes against all threats of "termination"--the unilateral severance of the federal-Indian relationship by the federal government. The Indians' dread of termination was recognized by the president in his Indian Message to Congress of 1970. He said, ". . . the mere threat of termination tends to discourage greater self-sufficiency among Indian groups. . . ." Termination is often implicitly threatened by bureaucrats in response to Indian criticism of federal programs and to Indian demands for reform in federal agencies: "If you criticize us too severely, the Congress may terminate Indian programs and services."

The Indian Self-Determination Act of 1975 provided the mechanism for tribes to contract with the federal government to themselves perform services for their people that had been previously provided by the federal bureaucracy. The tribes are now involved as governments serving their people as well as governing them.

Self-determination without termination is now national Indian policy, as enunciated by the president and by the Congress. However, responding to strong organized anti-Indian pressures, some members in Congress have introduced legislation recently to abrogate the treaties and to terminate the federal-Indian trust relationship. But, self-determination with full federal-Indian trust relationship must remain national Indian

policy for this country to fulfill its promise to its native peoples.

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Teacher Resource Sheet #4:
Tribal Jurisdiction

The Congress shall have power . . . to regulate commerce with foreign nations, among the several states, and with Indian tribes.

Article I, Section 8
The Constitution of the United States of America

Prior to the independence of the United States, all nations that dealt with the Indian tribes on this continent dealt with them on a nation-to-nation basis recognizing tribal sovereignty. The Constitution, in its Commerce Clause (Art. I, Sec. 8), recognizes the Indian tribes as governments. Since the founding of this nation, tribal governmental powers have been recognized by the courts, and by the executive and legislative branches of the federal government.

As governments, Indian tribes have general powers to 1) make laws governing the conduct of persons, including non-Indians, in Indian country; 2) establish bodies such as tribal police and courts to enforce the laws and administer justice; 3) exclude or remove non-members from the reservations for cause; and 4) regulate hunting and fishing, land use, and environmental protection.

The power of tribes to make their own laws has been recognized in a number of areas including domestic relations, taxation, and property use. The power of the tribes to enforce laws also extends generally to the exercise of criminal jurisdiction over persons who commit crimes on reservations.

The power of the tribes to establish courts is also firmly founded in the law. In Iron Crow v. Oglala Sioux Tribe, a federal court of appeals upheld the jurisdiction of a tribal court to punish members of the tribe for violating a tribal law, and to enforce a tribal tax on non-Indians who leased lands on the reservation. The court stated that the power of the tribe to establish courts to enforce its laws was not dependent upon any federal law, but was inherent in the tribe's sovereignty.

Another aspect of an Indian tribe's power to administer justice is its power over the extradition of persons accused of crimes. A federal appeals court has upheld the power of a tribal government to determine whether or not it will extradite an Indian within its jurisdiction for trial in another state. In that case, the court said that extradition was governed by tribal law, not the law of the state.

Although the power of Indian tribes to make and enforce laws has been recognized as an aspect of Indian sovereignty, federal courts have said that this power is subject to limitation by treaty or express acts of Congress. For example, the Major Crimes Act of 1885 allows certain crimes committed within tribal jurisdiction (murder, rape, robbery, etc.) to be tried in federal courts. The Indian Civil Rights Act of 1968 requires tribal governments and courts to guarantee certain individual rights such as the right to trial by jury in criminal cases.

Opponents of tribal government (including some well-meaning people who felt that, in order to save the Indians, they had to destroy their tribes) have, through

the years, imposed on Congress to limit or destroy tribal sovereignty and all its attributes. Congress responded to such pressures and, in 1953, enacted Public Law 83-280 which essentially authorized certain states to assume jurisdiction over tribes within their boundaries. Over the past quarter century since its enactment, P.L. 280 has been condemned a failure by tribal leaders universally. Tribal leaders cite example after example of state and county law enforcement officers either refusing to respond to calls for assistance on Indian reservations, or overzealously reacting and brutalizing Indians when they did respond. Overzealousness and brutalization was widely attributed to racism; refusal to respond is largely attributed to white resentment over reservation exemption from state taxation--attitudes of, "Why should we protect you when you don't pay taxes and our salaries?"

In 1975, legislation was introduced by Sen. Henry M. Jackson that provided for reacquisition of jurisdiction from the states by the tribes. In hearings on that bill (S. 2010) Indian leaders hailed its provisions and, surprisingly, a number of spokesmen for key states affected by P.L. 280 joined in support of its passage.

James Dolliver, representing Gov. Dan Evans of the State of Washington (a P.L. 280 state) testified, "Let me begin by saying it is the policy of the Governor . . . that we believe in retrocession (of jurisdiction from the state to the tribes)." He concluded, "We feel that Indians are fully competent to conduct their affairs, and if retrocession is what they desire, we support it."

Jack Olsen, district attorney for Umatilla County of Oregon, in supporting the bill, said, ". . . those very principles which we consider dear to the hearts of every American citizen, those very principles which served as the catalyst to the development of this great land--liberty and the right to self-determination--are in fact still being denied to that very group of Americans who first settled this continent."

Regarding the practical application of the law, Olsen stated further, "it is essential that jurisdiction be returned, at least to the Umatilla Indian Reservation. . . (which encompasses) some 286,000 acres. With these vast areas, state and county law enforcement simply cannot provide the protection it ought to be providing. This applies both to the Indian and non-Indian living on or passing through the reservation."

The office of the Nebraska attorney general opposed the bill for fear of loss of state tax revenue with the loss of state jurisdiction over the tribes. That question was subsequently mooted by the Supreme Court in the case of Bryant v. Itasca County wherein it was decided that P.L. 280 does not grant the state the right to tax the reservations with the assumption of criminal and civil jurisdiction.

To the extent that Congress has not expressly limited the exercise of power, Indian governments remain free to exercise their sovereign rights to administer justice and enforce tribal laws. The tribes are optimistically in process of upgrading their law enforcement capabilities and their court system. The American Indian Lawyers Training Program, the American Indian Tribal Court Judges Association, and the American Indian Law Center are all involved in programs to assist the tribes in their judicial development. The National Congress of American Indians

will in the near future launch a national association of tribal police.

The tribes are determined to retain their sovereign rights, and to continue to progress as governments with the attributes of sovereignty including jurisdiction over their lands.

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Teacher Resource Sheet #5:
Abrogation of Indian Treaties

The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed . . . but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

The Northwest Ordinance, 1787

The "discovery" of America by the European nations required them to look at various doctrines of international law to formalize their relationship with the Indian nations on this continent. By the time the United States came into existence as a nation, European governments had come to recognize that Indian nations were sovereign and, as such, the only legal and civilized way of establishing relations with them was by treaty.

Simply stated, a treaty is a binding international agreement between two or more sovereign nations. Since the birth of the nation, over 400 treaties stand as evidence that Indian tribes were recognized and treated by the United States as sovereign nations.

Through treaties, Indian nations granted certain rights to the United States and reserved lands and rights for themselves. Treaties are therefore very important in understanding the rights of Indian people today. The treaty rights of tribal members result from the distinct political identity of Indian governments recognized in the treaties.

Today, for reasons of racism and greed, some organized forces are working to destroy tribal governments and are challenging the validity of Indian treaties, saying that the treaties are not real treaties, that the treaties have become invalid with age and circumstances, and that they should be abrogated for the benefit of Indian and non-Indian citizens alike. And there are many sympathetic people who, being unfamiliar with Indian history and Indian law, fail to support Indian treaty rights, believing that the breach or violation of the treaties on the part of the United States has somehow nullified them. But age has not invalidated the treaties any more than it has invalidated the Constitution which recognizes them as the "supreme law of the land." Nor does breach or violation of treaties nullify them any more than does the act of committing a crime nullify the law that forbids the crime.

Are the treaties that important to the Indians of today? To Indians, treaties are vital for many reasons. First, they represent a legal and binding agreement made between the tribal governments and the United States. Often, before a treaty agreement was reached, many had given their lives in wars to protect the land and rights guaranteed by the treaty. The United States signed treaties with Indian governments because of the political, economic, and territorial advantages gained. In exchange for millions of acres of land, the United States agreed that

Indian governments would be able to reserve forever for themselves certain lands, and that the Indian people would be able to live there in peace and harmony, governing their nations as they had done from time immemorial. In addition, the United States promised to protect the Indian nations from harm by its own citizens or foreign nations.

Should Indian treaties be important to the United States? If the United States cares about its honor and integrity, and does not want to breach both its Constitution and international law, the Indian treaties are very important to the country.

A bill was introduced in the 95th Congress by Rep. John Cunningham (D-Washington) calling for the abrogation by the president of all treaties entered into by the United States with Indian tribes. Deceptively titled The Native American Equal Opportunities Act, that legislation calls for the unilateral abrogation of treaties, the termination of the trust relationship between the tribes and the federal government, and the liquidation of all tribal lands and assets for distribution to individual tribal members.

Abrogation of treaties means the termination of the special relationship between the tribes and the federal government. An Indian policy which has failed miserably in times past, termination ends the federal programs for Indians in health, education, economic development, and other areas. States can expect to assume financial responsibility for health, education, law enforcement, and other services in the event of federal termination of its responsibility.

In addition, since treaties are the supreme law of the land and are protected by the Constitution, the United States would have to pay fair compensation for every treaty right it abrogates. Since the more than 400 treaties cover the protection of many rights, including human rights, governmental rights, and property rights, the United States could expect to pay billions of dollars in compensation to the Indians for the loss of rights and resources resulting from abrogation.

So, is it really worth it to abrogate Indian treaties? To the Indian people the answer is "no!" since it could amount to the loss of Indian culture and sovereignty, and no amount of money could compensate for that. And to the United States, the answer should be obvious, for as Supreme Court Justice Black once said, "Great nations, like great men, should keep their word," and if this nation means to live up to its Constitution, if it has any sense of morality and justice, and if it cares about its integrity in the world, then it will respect the solemn promises made in its treaties with the Indian nations.

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Teacher Resource Sheet #6:
Indian Claims

A certain rich man was enjoying a banquet. As he sat at the groaning table he could see outside the window, at the door of his home, an old woman, half starved, weeping. His heart was touched with pity. He called a servant to him and said, "That old woman out there is breaking my heart. Go out and chase her away." Something of the same attitude has characterized our attitude towards the Indians on our national doorstep. Where we have not physically called on our public servants to chase them away from the doorstep, we have often disposed of them spiritually by denying their existence as a people, or by taking refuge in the Myth of the Vanishing Indian, or by blaming our grandfathers for the wrongs that we commit. In this way we have often assured ourselves that our national sins were of purely antiquarian significance.

Felix Cohen
The Legal Conscience

Recently, several Indian land claims in the Eastern United States have stirred considerable controversy over an issue which, in past years, has caused little notice. That which caused the most controversy, however, was the claim to some 12 million acres in the State of Maine by the Penobscot and Passamaquoddy tribes. The reluctant decision by the Justice Department to join the tribes in their suit increased the furor.

Maine's governor and state attorney general embarked on a campaign of hysteria to rile public indignation over the claim and thus to secure support for legislation in the U.S. Congress to override the claims before they could reach fruition in the likelihood of a court decision favorable to the Indians. Even the most responsible press, The Washington Post, joined in the controversy and published an editorial referring to the "Indian raid" on the State of Maine and the Indians "laying siege" in the courts. (Indians who occupied Alcatraz in 1970, the Bureau of Indian Affairs in 1972, and Wounded Knee in 1973 were somewhat befuddled at the press which, at that time, admonished them to work "within the system" and are now describing their efforts in the courts as "raiding" and "laying siege.")

Anti-Indian groups adopted as part of their strategy scare tactics of revealing bizarre conspiracies on the part of the federal government, in collusion with high-paid legal counsel representing the tribes, to give America back to the Indians and drive the non-Indians out of the country. In a pamphlet titled Are We Giving America Back to the Indians?, published and distributed widely by the Interstate Congress for Equal Rights and Responsibilities, the major national anti-Indian organization in the country, the following misinformation regarding Indian claims is given:

Q - How are they able to do this? Do they buy the land or is it given to them?

A - It is being given to them. They often make a claim, then go through the courts to get it. They know the momen-

tum of the court decisions is in their favor and they are making more and larger claims.

The pamphlet then cites cases of alleged wholesale "giveaway" of federal land to the Indian tribes: 48,000 acres to the Taos Pueblo in 1970, 21,000 acres to the Yakima tribe in 1972, and 346,000 acres to 18 tribes in 1975. The pamphlet implies that these are but an example of much more massive land returns to Indians to date. These cases are explained later in this article, after we deal with the facts of Indian claims.

The United States Constitution designated the Congress as the branch of government to regulate commerce with Indian tribes, and the most important subject of trade between Indians and whites was inevitably the land which the Indians owned and the white immigrants needed.

Through treaties and statutes, the federal government assumed the protection of Indians in an arrangement which is referred to as the federal-Indian trust relationship. It is important to realize that what the federal government undertook to protect was not only the welfare of the Indians but the rights of the Indians as well; and such rights include rights of personality, rights of self-government, and rights of property. This principle of federal protection of Indian rights has proved to be of special importance in the maintenance of Indian land rights since the United States undertook to protect the Indian tribes in their possession of vast areas of land.

Virtually all the lands acquired by the United States from the Indian tribes were purchased through treaty or agreement. However, major problems have arisen because of the manner in which the transactions were often conducted. Errors were made in determining the boundaries of lands sold by the Indians or reserved by them; sometimes the money that was to be given to the Indians in form of agreed-upon merchandise or services was diverted to other unauthorized purposes; or payment was promised to the Indians for lands if and when the U.S. received payment from individual homesteaders, and the funds were never collected from the homesteaders.

If any of these difficulties arose in the course of land transactions between private citizens, resort to the courts would be the natural channel of redress. But, as a sovereignty, the United States is exempt from suit except in so far as it permits injured parties to bring suit. In 1863, Congress barred any claims that arose from Indian treaties if such a claim was not pending before the Court of Claims before December 1, 1862. This action by Congress denied legal recourse to the tribes, although in subsequent years, Congress did enact special statutes allowing particular tribes to bring suit in the Court of Claims for injuries arising under various treaties and agreements. However, the effect of that discriminatory Act of 1863 had been to inject gross delays into the judicial settlement of treaty claims. The tribes had to resort to years of political process to get Congress to enact special legislation to allow their claims to be brought to the Court of Claims, and then had to go through the lengthy process of litigation.

By 1945, Congress had passed special statutes that allowed some 185 cases to be brought to the Court of Claims. Of those, less

than 30 percent resulted in judgments for recoveries to the Indians; and the recoveries amounted to considerably less than the cost to the United States for litigation of the cases.

The cumbersome and inefficient (and unfair) system of legislating rights to the Court of Claims on an individual tribal basis brought up the need for a special court to settle treaty violations and other Indian claims against the United States. The idea of a special commission rather than a court to consider Indian claims was developed in the late 1930s and became a reality in 1946. It was then that Congress established the Indian Claims Commission to hear and settle legal and equitable Indian claims against the United States in matters resulting from treaty violations, unauthorized taking of lands, and conflicts arising under the Constitution, laws, and executive orders of the United States.

The Indian Claims Commission was intended to be a streamlined solution to Indian claims; unfortunately, the Commission--half administrative agency, half court--was not wholly acceptable to the tribes. A principal objection of the tribes was that the Commission offered relief only in form of monetary compensation; and many of the Indian people felt that, to accept such payment, meant that they gave up claims to their aboriginal lands forever.

The settlements were not always that just or lucrative to the tribes. In the negotiations, the federal government claimed offsets--or deductions from the money granted, for services and materials provided to the tribe from the time of the injury claimed. And the tribes, from their settlement, had to pay for legal counsel, historical research, anthropological support, and technical work done in the litigation of their claims. Claims that have dragged on for years resulted in massive expenses that the tribes had to pay from their settlement monies.

A few tribes, after lengthy and costly claims litigation, had to consent to indignities and injustices even in victory. After settlement in the Commission, Congress had to enact appropriations to pay the tribe involved in the claim, yet another lengthy process. In one classic example of Congressional blackmail, the Menominee tribe had to submit to termination--the severance of their special relationship with the federal government--in order to secure the funds due them as a result of their claims settlement.

The Indian Claims Commission expired in September 1978, and all remaining claims were transferred to the Court of Claims. In hearings for unsuccessful legislation to extend the life of the Indian Claims Commission, witnesses for the Court of Claims maintained that, due to the existing backlog of cases, and due to its lack of experience and expertise in Indian claims, the process of adjudicating Indian claims would be lengthier and more cumbersome than in the Indian Claims Commission. The many tribes with pending claims have a long and costly wait ahead of them.

So, although the Interstate Congress for Equal Rights and Responsibilities promotes the ideas that Indians at this late date are trying to take advantage of a nonexistent atmosphere of guilt-

ridden liberalism to recover claims for injustices done to them in the past, the tribes have been in the claims process for decades.

As to the cases of actual return of lands to Indian tribes the following accounts are offered:

The Maine Land Claim

In 1777, the brand new American government negotiated a treaty with the Penobscot and Passamaquoddy tribes that promised, among other things, to protect their hunting grounds. In a show of good faith in the new treaties, those two tribes fought valiantly on the side of the Americans during the Revolutionary War. When the conflict was over, however, the two Indian nations were ignored, and in a series of transactions beginning in 1794, Maine and Massachusetts took practically all their lands and left them destitute.

For years, the Passamaquoddy and Penobscot nations sought redress through the legal system. In 1971, their legal prospects brightened when it was discovered that, even though the 1777 federal treaty had never been ratified by the Senate, the state transactions were legally void under the 1790 Non-Intercourse Act.

Even then, when the tribes asked the federal government to represent them in their claims, they were refused and told that the Non-Intercourse Act did not protect them. The tribes sued the federal government and in 1975 won a decision holding that the Non-Intercourse Act did indeed protect them. In that court decision, the federal government was ordered to investigate the claims, and subsequently the Justice Department announced that they had concluded that the tribes have valid claims and that they intended to file suit for the return of between five million and eight million acres of land to the tribes and monetary damages for wrongful use of the land. A deadline was set for the filing of the suit unless a settlement could be negotiated before that time.

The Indians in Maine had patiently pursued their grievances through the courts. They had consistently offered to negotiate their claims but were met with disdain from the State of Maine. They consistently expressed concern for the established homeowners and small businessmen and worked out plans to litigate or negotiate in the least economically disruptive manner to the people of Maine. At the tribes' request, the suit was to be directed at a handful of large paper and timber companies which occupy the vast bulk of the land in the claims.

The governor, attorney general, and congressional delegation of the state embarked on a massive publicity campaign claiming economic chaos in light of their temporary inability to sell municipal bonds, and the inability of businessmen to secure loans pending title clearance of lands in question. The fact that, after assurances by the tribes of nondisruptive suits, Morgan Guaranty Trust issued some $15 million in municipal bonds for that area was played down by the state leaders in their propaganda campaigns.

The Maine congressional delegation, even while claiming that they were confident of winning in the courts, introduced legislation to extinguish the Indian title to the land in question. The legislation still hangs over the heads of the tribes in their efforts to negotiate or litigate a just settlement.

Taos Blue Lake

In 1906, in an era of ruthless dispossession of Indians from lands rightfully theirs, 480,000 acres of land was taken from the Taos Pueblo in Northern New Mexico and placed in the Carson National Forest. That land included Blue Lake, the area where the most sacred rites of traditional Taos religion were held from time immemorial.

After over 65 years of effort, including nearly a decade of intensive pleading with the Congress, legislation was enacted returning the land to the Taos Pueblo people. That legislation restricted the land to religious and ceremonial use by the tribe and required that the land be kept forever in a state of wilderness. This requirement posed no problem for the tribe--it was what they had in mind for centuries anyway.

Submarginal Lands

In 1975, pursuant to the Submarginal Lands Act of 1933, Congress enacted legislation for the transfer of certain lands to be placed in trust for certain tribes. In virtually all instances, the lands were already within the boundaries of the reservation to which they were transferred. Rather than a "grant" of lands to the tribes, the transfer was the fulfillment of law enacted 40 years earlier.

In 1933, during the "dust bowl" days of the Great Depression, many individual farmers and ranchers were being driven out of business by the lengthy drought and the state of the economy. Rather than allow the banks to foreclose on their lands and force them into destitution, the federal government purchased the lands from the farmers and ranchers and turned the acreage over to adjacent or surrounding municipal and state governments, national parks and grasslands, and Indian tribes. It should be noted that the term "submarginal" refers to the economic state of the farms and ranches at that time of the Depression and not to a barren state of the lands.

The municipal and state governments and the federal parks and grasslands received their "submarginal" lands immediately following the enactment of the 1933 law: the tribes received theirs 40 years later, after lengthy and costly lobbying.

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Teacher Resource Sheet #7:
Indian Sovereignty—A Perspective

. . . The national organization known as the American Indian Movement (AIM)* was initially founded as a response to tactics of police brutality directed at American Indians in urban centers such as St. Paul and Minneapolis, Minnesota. Injustices to native people ranged in scope from that of police brutality to corruption in the Bureau of Indian Affairs and Interior Department, and AIM was shortly involved in protests against a wide variety of problems. One of the most dramatic problems emerging was corruption within federally controlled "elective systems" of government on Indian reservations, and the exploitation of Indian lands under policies directed by the U.S. Government. . . .

The occupation of Alcatraz Island spoke indirectly to this, and the Trail of Broken Treaties which converged from all over North America on BIA headquarters in Washington, D.C., was a direct result of these conditions. The setting up of the Independent Oglala Nation at Wounded Knee spoke directly to the issues. Before and since, throughout North America, Indian communities have staged protests against the U.S. and Canadian government policies relating to everything from industrial development to education. . . .

The American Indian Movement is more than a legal reform or elective system reform movement. We should all remember that it has protested far more than simply the failure of the U.S. to uphold the treaties. In some respects, the native movement has spoken to conditions and problems which other movements in North America have simply failed to address--it has spoken to the real conditions of being human--human beings.

The question of treaties arose because agreements, which had been made to allow human life in North America to continue according to the natural law of the Creation, had been broken. The agreements were broken because of a process, which is still moving along, which injures all human beings and specifically native peoples. That process is one by which lands are subjected by force and coercion to death and violation to meet the needs of Western peoples. The roots of that process are both visible and deep.

***Editor's Note To Teachers:** Several Indian people who commented on this article suggested that Indian organizations other than AIM be mentioned in our discussion of tribal government and sovereignty. The following are a few nationwide Indian organizations which exist today to speak for Indian interests and concerns:

National Congress of American Indians (NCAI)
National Indian Education Association (NIEA)
Native American Rights Fund (NARF)
American Indians for Opportunity (AIO)
National Tribal Chairmen's Association (NTCA)
Council of Energy Resource Tribes (CERT)

Excerpted with permission from "The Sovereignty Which Is Sought Can Be Real. . . " by Sotsisowah (John Mohawk) in Akwesasne Notes (Early Autumn, 1975): 34-35.

Cities are centers of population which cannot sustain human life. In order for people to survive there, material goods such as food and fuel and other raw materials as well as vast amounts of energy must be delivered to the city. These materials have to come from somewhere--and that somewhere is the natural world.

Natural world people such as the Pequot and the Iroquois or the Lakota (or the Tiv or Vietnamese) depend for their livelihood on direct contact with natural processes--wind, water, buffalo--and were not inclined, nor did they necessarily seek the technology to organize themselves to the production of food or supplying of materials to the city.

However, European peoples organized themselves to exploit the natural world. First, wherever they encountered native peoples, they attempted to promote trade for the purpose of extracting raw materials--furs, elephant teeth, wood--in the early contact stages. As their knowledge of and interest in an area increased, they utilized whatever methods were needed to expand the levels of extraction. . . .

The Indian nations that encountered this process were driven from their lands onto reservations. Even on the reservations, the populations that depended upon subsistence were denied control of their lands, that control being vested in the Interior Department or the Department of Indian Affairs and Northern Development, aided later by their subsidiary elective councils. Thus do we find Indian reservations flooded by dams to provide water, flood control, and hydro-electricity to the cities. Mines open the earth for coal to provide electricity for the cities. On Indian reservations, white ranchers raise food to be packaged and sent to the cities--while the native people who are entitled to the land go hungry.

This process does more than simply take the land and the use of the land away from the people. The process by which territories are brought under the control of people foreign to those territories is called "imperialism." An aspect of that process is one called "colonization." Colonization is a process of changing the behavior of a people to suit the desires of the colonizer--that is also, at base, the definition of slavery.

Peoples through the worlds have developed localized cultures. Cultures are learned means of survival in an environment and involve such things as language, education, technology, and social organization which transmit those learned means of survival from generation to generation. Colonization interrupts the pattern of learning to <u>survive</u> and substitutes learning to <u>serve</u>. Thus, the colonizer has a language, technology, training, and so forth which he wishes to impart to a people, but these things are meant to serve his own interests rather than the interests of the people. . . .

The continued attacks on land and culture have taken their toll, especially upon the spirits of The People. People who are in "high spirits" are people who enjoy and want to live life. People who are colonized--slaved in economic servitude--are spiritually depressed. . . .

On the Indian reservations of North America, we are able to see the same experience. Native people, especially youth, have the highest suicide rate of any people in the world. . . . On some reservations, the majority of the adults are obese, dental problems are rampant, and one in four have some stage of diabetes. If you are forty, statistically one-half the people your age have already died, and you live on borrowed time. . . .

It is against that bleak background that native people are realizing that we must begin to seek alternatives. . . .

Student Resource Sheet #1:
Introduction to American Indian Governments

Besides federal, state, and local governments, there is another kind of government in Wisconsin and in many other states that is of greater importance than the state or other local governments to some people. Those people are American Indians (sometimes called Native Americans or Native people). Their governments are called tribal councils or business committees or tribal legislatures.

Tribal councils are usually made up of elected representatives of the Indian people enrolled in the tribe or nation. There may be as few as six council members (as in the case of the Forest County Potawatomi Tribal Council in Wisconsin) or as many as 74 (as in the case of the Navajo Tribal Council in Arizona). Some council members are elected at-large, that is, from the tribe as a whole (as in the case of most small reservation-based tribes); others are elected from different areas or regions in which tribal members live (as in the case of the Wisconsin Winnebago). The election of tribal council members as well as the chairperson of the tribe may take place every two to four years, depending on what the tribe's constitution requires.

Regardless of how or when they are elected, however, Indian tribe councils are true governing bodies with substantially the same power over Indian people as any of the named governments have over their citizens.* They can make laws; levy taxes; determine tribal membership; buy, lease, and sell land; run elections; establish and maintain a police force and a court system--in two words, they both regulate and serve their populations. Usually their populations are the members of the tribe, but tribal governments may also regulate non-Indian people on tribal land or the reservation and can also serve Indian people not living on tribal land. Finally, they can negotiate with other governments--federal, state, or local--on behalf of their citizens.

It is very difficult to talk about American Indian governments because everything is much more complicated than the words imply. However, we will try to learn some basic things about tribal governments because they are an important governmental unit in our state and nation.

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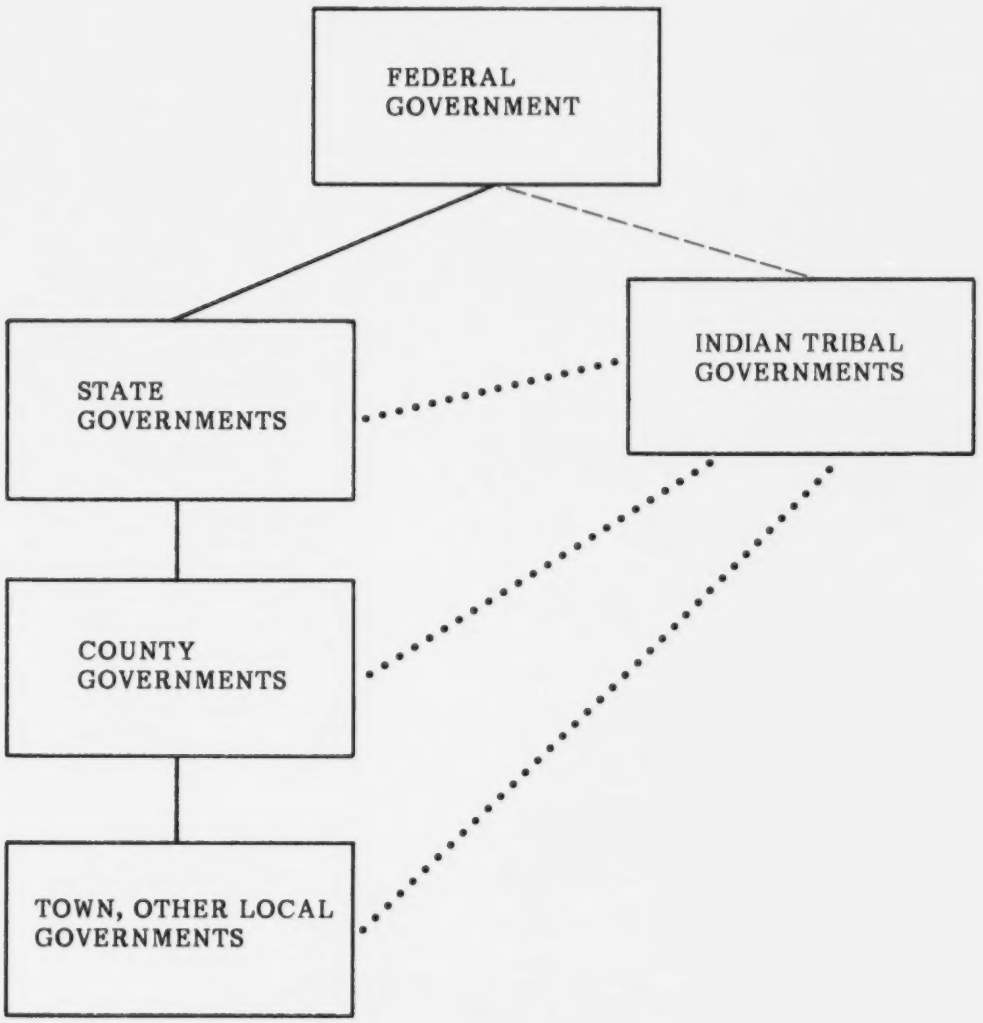
*Tribal governments, of course, are subject to the U.S. Constitution and have restrictions in their powers, much as state governments do. They may not raise armies, print their own money, levy import or export taxes, and so forth.

Teacher Resource Sheet #8:
Relationship of Tribal Governments to Federal, State, and Other Governments*



_____ By U.S. Constitution and state constitutions

_ _ _ _ By U.S. Constitution and treaties

. . . . . Upon creation of state and other governments

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*This diagram, intended for use as a transparency, refers to federally recognized Indian governments only. In some cases, tribes are recognized by state governments, and their relationships to other governmental units are different.

Name _____

Student Worksheet #1:
History of American Indian Tribal Governments

In order to understand how tribal governments work today on different Indian reservations, it is necessary to look briefly at the history of Indian nations.

I. Traditional Indian Governments

Before white settlers came to claim the North American continent, there were hundreds of Indian tribes or nations[1] living throughout the continent. Each one was different in size, different in language, different in culture, and different in how it ran its form of government.

Just to give you an example of the differences, take a look at the government system of the Iroquois[2] nations from the New York area compared to the government system in the tribes of the Great Lakes area at the time of non-Indian contact.

Among the Iroquois nations the council members were all men chosen by the women. Everything was owned and controlled by the women. When a man married, he moved into his wife's house. Children from marriages belonged to the mother's clan and took her clan symbol. There was usually one woman who was the major clan mother and had the strongest voice as to who would be chosen to be on the council. A man could "earn" a position on the council by doing certain good deeds and being worthy of honor by the people. Much of this is still true today in Iroquois nations.

On the other hand, each nation of the Great Lakes area was ruled by a council of elders or chiefs. All people had input into the decision-making process, but it was the men or the council who made the final decision for the welfare and benefit of the people. A man could become a chief in several different ways. If his father was a chief and he was the eldest son, he automatically inherited the title upon his father's death. A man could also be appointed a chief if he earned the title through certain deeds. For example, if he were generous and kind and performed good deeds for others, the tribe could honor him by asking him to serve as a chief. However, if he earned his title through these means, it did not pass on to his eldest son when he died.

II. Early Indian-European Relations

As Europeans, such as the Spanish, Dutch, English, and French, started arriving on America's shores in search of gold, expanded fur trade, and finally land for their own peoples, conflicts began with the many Indian nations.

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1. The terms "Indian nation" and "Indian tribe" will be used interchangeably throughout this activity, although strictly speaking they have quite different meanings.
2. For pronunciation of many of the Indian names in this reading, see page 51.

Some of them banded together to resist the European advances. For example, one of the first Indian confederacies was the Powhatan Confederacy in the Virginia area. The tribes had signed an agreement of friendship with the British, but the British kept increasing in population and wanted more land. The Powhatan Confederacy was formed to decide how to fight the British.

Things were somewhat different in the Southwest, where the Spanish dominated for about eight years. They simply forced people to be slaves, and if one did not obey, one was sent to another part of the world. The Spanish forbade Native people to speak their language, practice their dances, sing their songs, or practice their religion.[3]

Indian governments changed as Indians discovered that, wherever they looked, other Native people like themselves were being forced to give up their lands to the whites. The beginning of the 1700s saw the complete disappearance of many tribes along the Eastern seaboard as they were killed off by settlers. One group of nations that was not intimidated by the settlers was the Iroquois Confederacy, a group of five major nations in the area of what is now New York--the Oneida, Seneca, Mohawk, Onondage, and Cayuga--later joined by the Tuscarora from North Carolina.

Things became more complicated in the mid-1700s when the French, British, and Americans waged war against each other, each trying to gain the allegiance of groups like the Iroquois to support their side. This was called the French and Indian War, but it was called that by the English and the name is not really accurate. Actually it was the French and English War, with Indians fighting on both sides. The French and British were fighting for domination of the land, with the American colonists wanting their independence from the British.

III. Indian Policies

Warfare

Unfortunately, when Americans gained their independence in 1776, the only "Indian policy" they had was one of warfare (fighting Indians for their land). When non-Indians won, they took as much Indian land as they felt they wanted and needed. Many Native leaders waged war against the Americans, but all were eventually defeated. With Pontiac's defeat in 1795, the Ohio Valley region and the Western plains were finally opened for settlement by non-Indians.

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3. For information on one missionary's attempts to change Spanish policies, read about Bartalome' Las Casas in the encyclopedia.

Treaty Making

The time from 1776 on saw an intensive treaty-making policy adopted by the U.S. government. After a treaty was negotiated with Indian people, they usually had no land left and either were forced to move west or stay where they were. In either case their earlier ways of life were destroyed and their years were spent trying to survive in unfriendly surroundings. Until 1871, the U.S. government signed many hundreds of treaties with different Indian nations in an effort to get most of their land.

Removal and Reservations

Meanwhile, in the late 1820s, as white landowners pressured the U.S. government, the removal policy was put into effect. The Indian Removal Act, signed by President Andrew Jackson, stated that the tribes that were left east of the Mississippi, including the Cherokee, Choctaw, Chickasaw, Creek, and Seminole, had to move west of that river. If they didn't, they would be forceably moved. From that year on, thousands of Native people were forced off their land. The cavalry or the army would move in on a certain date, round up everyone and march them west, often giving them little or no time to gather their personal belongings. Thousands of Indian people died of exposure, exhaustion, and disease. For this reason the Cherokee call their removal "The Trail of Tears." Some of the Native people, however, hid out in the mountains or swamps, refusing to go west. This is why there are still Seminoles in Florida, Choctaw in Mississippi, and Cherokee in North Carolina today.

For all these nations, however--west or east of the Mississippi--traditional forms of government broke down under such adverse conditions. Imagine what it must be like to have your whole way of life destroyed, friends and family gone away or dead, property taken from you. Nothing operated as it did in the past.

When gold was discovered in California in 1848, Indians living there were not removed; they were massacred. Laws were passed which offered a bounty for every dead Indian. Many tribes were eliminated altogether, their history and knowledge lost forever. Over half of the Indians of California were eliminated because of the greed for gold.

By 1854, most of the tribal peoples in the plains area had been contained on out-of-the-way lands called "reservations." Their government, tribal life, and religious practices were threatened, if they had not already been destroyed. Often when representatives of the U.S. government approached a tribe to have them sign away most of their land in a particular treaty, they did not know enough about the social or governmental structure of the tribe (let alone the language) to know with whom they should negotiate. In many cases, Indians were arbitrarily chosen or even forced to sign treaties even though they had no power to do so in their tribes.

In what is now Illinois and Wisconsin, the Sauk and Fox, under the leadership of Black Hawk, resisted being moved west of the Mississippi for several years. When his people tried to cross the river in the summer of 1832, the army was waiting on the opposite side of the river and they opened fire, killing many of Black Hawk's people and capturing the leader.

Of the rest of the Indian nations in Wisconsin[4], the Winnebago and Potawatomi were moved westward, although eventually many Winnebago were recognized as homesteaders in Wisconsin. (Much as some of the southeastern Native people had done, many Winnebago resisted removal by simply "hiding out" in the forests of central Wisconsin. They eventually won their battle with the U.S. government to remain in their homeland.) Much later some Potawatomi, who had been removed to Kansas in 1836, also returned to Wisconsin.

Other groups, such as the Santee Sioux, Menominee, and Ojibwe (or Chippewa), were forced to cede large amounts of their land to make room for the westward-moving "settlers."[5]

Meantime, several groups of eastern Indians were moving westward and ended up in Wisconsin. The Oneida (one of the Iroquois nations mentioned earlier), Stockbridge, Munsee, and Brotherton came from Massachusetts and New York and settled in eastern Wisconsin. Thus, the forced movement westward of many different Indian peoples from many different parts of the East and Midwest changed the Wisconsin map considerably in the nineteenth century.[6]

In 1876, the U.S. government issued an order to eliminate[7] all the Indian nations of the plains. An army general by the name of Custer was to lead the army. After many massacres of Indian people by federal troops, the plains Indians, under the leadership of Crazy Horse, fought Custer in the Black Hills and wiped out all his men. Soon after the government sent many more troops. The Indian people had completed their last major effort at military resistance.

Any tribe that did not have a reservation by this time was forced to sign a treaty granting them a reservation. One tribe refused to sign a treaty: the Nez Perce tribe of Utah and Idaho led by Chief Joseph. They did not want to be confined to a reservation and managed to outwit the army for several months, at one time passing right by troops as they slept at night. But Chief Joseph and his people were captured just short of the Canadian border and freedom.

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4. See Student Resource Sheet #2.

5. Like many other words in history, the word "settler" is really quite biased. Indians "settled" on land, too, but because some groups had winter homes for hunting purposes and summer homes near their garden, they got stereotyped by non-Indians as being "nomads"--the opposite of settlers. Watch for other ways in which our language betrays our biases about people different from us.

6. Compare the map on Student Resource Sheet #3 with that on Student Resource Sheet #2.

7. When one race of people decides to eliminate another whole race of people, it is called "genocide." Indian people frequently use this word to describe <u>all</u> the policies of the U.S. government toward Native Americans because they were aimed at getting rid of the so-called Indian problem.

Assimilation

Another policy of the U.S. government toward Indians was that of assimilation. Very often in treaties and agreements Indian people were required to "give up their tribal ways" (dress and act like white people, go to school, take up farming, and so forth). In 1875, for example, in exchange for being allowed to take up homesteads in Wisconsin, Winnebago people had to "abandon tribal relations and adopt habits and customs of civilized people" (18 Stat. 420).

This policy, like all other Indian policies of the government, was ultimately aimed at getting Indian land. In the late nineteenth century, it very nearly succeeded in wiping out all Indian land-holding. For in 1887 Congress decided to make Indians landowners just as the non-Indian settlers were. It was determined to take away the reservations--that is the tribally owned land--and make Indians take up non-Indian-style landowning and farming as a way of life. They did this by passing the Dawes Act, which was designed to give or "allot" to every Indian a certain number of acres of land. In reality the government was trying to get out of being responsible for its past treaties with the Indians. Once the parcels of land on the reservations had been divided, the surplus lands were sold to interested non-Indian settlers. This is why the land ownership on most reservations today looks like a checkerboard (see Student Resource Sheet #4). And because Indian people were often given the poorer land--swamp or land with cut-over timber or poor soil--on most reservations today much of the more productive land is owned by non-Indians.

The latter part of the 19th century was disastrous for Indian people. The final step toward the destruction of the Indian way of life happened at Wounded Knee, South Dakota, in 1890. Several years before this, a man named Wovoka, from the Paiute nation, had started a spiritual movement called the Ghost Dance Religion, which appealed to Indians from many different tribes throughout the Great Plains area. By dancing the Ghost Dance, many Indians believed that the buffalo, which had been killed off by non-Indian hunters, would return to provide the Indians with a natural source of food and clothing.

Inspired by this new movement (and despite the government's attempts to ban their participation in it), Indians began gathering at various places in South Dakota to dance. The military, fearful of these gatherings, got edgy and imagined a great uprising of the plains Indians.

A Lakota man called Sitting Bull, who was wanted by the government, planned to attend the Ghost Dance. The army heard he was going to be there and sent soldiers to capture him. On December 14, soldiers entered Sitting Bull's house. The camp sprang to life and a battle began. It ended with Sitting Bull and seven others being killed. The murder of Sitting Bull, a great leader, greatly upset the Lakota people.

The government then issued orders that the Lakota people were to "surrender" and hand over all their weapons. Many reluctantly did. Other Lakota tribes gathered at the agency near Wounded Knee Creek later in the month. On December 29th, the army entered the Lakota camp. What started the disturbance is not known, but panic set in and the soldiers began shooting.

Most of the 148 people killed were old men, women, and children who belonged to the Lakota band led by Big Foot. This massacre at Wounded Knee was the final military defeat of the Indian tribes of the plains.

As we entered the twentieth century, most Indians were confined on reservations--their spirits broken, their traditional way of life destroyed, and a new way of life imposed on them that forced their dependence on government handouts of food and clothing. The Bureau of Indian Affairs (BIA), which was the bureaucracy that administered this impoverished way of life, was centered in Washington, D.C. The government controlled every aspect of Indian life including land ownership, money distribution, schools, religion, and law and order. Indian people had almost no control over anything. Whatever tribal governments existed were in form only. Some aspects of their cultures were kept alive by traditional leaders in certain tribes, but essentially Indian tribes were conquered nations who were treated in much the same manner as the British and the French treated their colonies in Africa, Asia, and South America.

Reorganization

By the 1920s, even the least sensitive members of Congress realized that federal Indian policy had been a disaster and was, along with slavery, one of the things of which our country could not be proud. Motivated by guilt, congressional leaders agreed that change was necessary. So some minor reforms began to be made. Although well-intentioned, each was still basically geared to assimilating Indians into what was thought to be our "melting pot" culture.

During World War I many Indians fought bravely, although they weren't required to enlist because they weren't citizens. In 1924, Congress voted to grant American citizenship[8] to all Indians.

In 1928, a very long and important report was made to Congress. Called the Meriam Report, it documented the loss of power that Indian nations had experienced all over the country. Many suggestions were written into the report to change living conditions for Indians, but most were overlooked during the Depression.

Finally, in 1934, a major act called the Indian Reorganization Act (or IRA, as it is called today) was signed by President Franklin D. Roosevelt. It was part of the "New Deal" for Indians. Like the Allotment Act, the IRA was praised as a great reform. However, instead of dismembering Indian tribes, the IRA was meant to bring the benefits of American-style majority-rule elections, creating Indian governments "where there had been none."

It is because of the IRA that new tribal constitutions were written and elected tribal governments were set up on many reservations. The intent was to give Indians some control over their reservations. But some of the structures of

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8. Some Indian people reject U.S. citizenship entirely and recognize only their citizenship in their own Indian nation. For example, some Mohawk Indians deny both U.S. and Canadian citizenship and travel to other parts of the world on their Iroquois passports.

the new tribal governments, such as majority rule and parliamentary procedure, were foreign to the Indian tribes, being very different from traditional Indian ways of decision making. Furthermore, many Native people felt that two parts of the IRA took the "meat" out of the reform. First, the new constitutions and tribal forms of government set up by each tribe had to be approved by the Secretary of the Interior. Second, all the decisions made by this new governmental body could be vetoed by the Secretary of the Interior. Such requirements for approval by the white power structure hardly gave the tribes full self-determination or sovereignty.

The U.S. Government promised massive economic aid to Indian tribes that voted to organize under IRA. Sixty-seven percent of the Indians in the United States voted for it, and 172 tribes adopted new governments.

However, if we look at just one example of an Indian tribe's "approval" of the IRA, we get a different picture. On the Hopi reservation, in the Southwest, the day of the referendum found 21 percent of the Hopi voting "yes" for the IRA and 12 percent voting "no." Sixty-seven percent of the Hopi people didn't vote at all! Yet, Washington interpreted this vote as a "yes" for the IRA. Ironically, after ten centuries of having their own traditional form of decentralized self-government, the Hopis joined with other American Indians to be governed by a new, central, authoritative council, empowered to make deals with any outside agency under U.S. supervision. Some Indians today still interpret these elective governments as "puppets" because they often do not respond to the wishes of the people.

How were Wisconsin Indian nations affected by the passage of the IRA? Four of the Ojibwe reservations had already been established by the Treaty of 1854: Red Cliff, Lac du Flambeau, Lac Court Oreilles, and Bad River. In the 1930s the Mole Lake Chippewa finally received a small reservation of 1,750 acres (just a little bit larger than two and one half square miles) because the IRA provided that funds be set aside for land for tribes that had not yet been recognized. The St. Croix Chippewa (called the "Lost Band of St. Croix" because they had never signed the 1854 treaty) received a reservation of about the same size but in scattered parcels of land around their settlements. The Oneida and Stockbridge-Munsee also got reservation land.

All of the Wisconsin tribes except the Menominee and the Winnebago set up constitutions under IRA regulations during the 1930s, like a few other tribes (such as the Navajo, who also rejected the IRA). The Menominee had already set up a system of elected officers to approve contracts with lumbering companies. This elective system was used to run tribal business, and it continued to do so.

The Winnebago did not vote for an IRA form of government, primarily because they weren't recognized as a tribe in the 1930s. Since they had no reservation to begin with, they had few of the complaints of reservation Indians about meddling. They investigated the IRA but did not vote either for or against it. Basically, they were afraid to sign their names to any new plan that might be used against them in the future and would prevent them from collecting money they felt was owed to them because of old land negotiations.

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The Winnebago did not officially become a tribe until 1963, and today they have title to just over six square miles. This land is located in 10 different counties in the center of the state. Ironically, the Winnebago, who are the most scattered geographically, have held on to their cultural traditions the most strongly, and many members of the tribe still speak their native language.

Have the governments of Indian nations been drastically changed by the Indian Reorganization Act? Vine Deloria, a well-known Sioux writer and attorney writes:

> The basic Indian political pattern has endured despite efforts by the federal government to change it. The people still follow a man simply because he produces. The only difference between two centuries ago and today is that now the Bureau of Indian Affairs defines certain ground rules by which leaders can be changed. These rules are called tribal elections. Otherwise, leadership patterns have not changed at all.
>
> Today a man holds his chairmanship as long as he produces, or at least appears to produce, for his tribe. Without making substantial progress or having the ability to present a fighting image, a man's term in tribal office is short and severe. Demands are great. Some tribes have never had an incumbent re-elected because tribal goals far surpass any conceivable performance. A few tribes have had strong men dominate tribal affairs for long periods of time because of their tremendous following with the people.
>
> Unlike hunting days, production today depends upon the ability to gain concessions from governmental agencies. Some tribes demand more from the bureau than others.[9]

Despite the fact that many of the newly "elected" tribal governments were set up only in conformity with the rules and regulations of the Indian Reorganization Act, one of the most helpful aspects of the act provided for tribal governments to hold "tribal lands" in common, if it could be arranged.

The IRA was important in stopping the shrinking size of each reservation. Between 1887 (when the Dawes Allotment Act had been passed) and 1934, Indian land had been reduced by two-thirds (from 138 million acres to only 50 million acres). The IRA provided that

> ,t.he Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation. . . .[10]

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9. Custer Died for Your Sins: An Indian Manifesto by Vine Deloria, Jr. (Macmillan, 1969), pp. 205-206. Deloria's sexism may have been excusable in 1969 but it no longer is today. The October 1981 issue of OHOYO, a national bulletin for American Indian and Alaskan Native women, reported that at least 71 women headed Indian tribes or bands and village native corporations.

10. A Short History of the Indians of the United States, edited by Edward H. Spicer (D. Van Nostrand, 1969), p. 212.

In other words, money was set aside to keep any more reservation lands from being sold to non-Indians.

After 1934, tribal elections began taking place in order to install the new tribal governments suggested under the IRA. These elected tribal governments were often viewed by other members of the tribe as an "institution" introduced by the federal government. This institution is often regarded with the same point of view that a city person might regard the police station or the city government: it is a foreign feature to their daily lives. To the older members of the tribes, who had been used to approaching the Bureau of Indian Affairs personally, these new tribal governments often seemed to get in the way of the more personal approach. Many of the people who were voted in as members of tribal councils were simply elected because they best knew how to "get something" from the BIA.

These new governmental structures reflected the white American belief that majority rule, representative bodies, and secret ballots are somehow absolute values that any good government should possess. Yet, in many tribes majority rule replaced a consensus decision-making process. In consensus decision making, important discussion takes place in many groups until everyone present agrees to a plan or a compromise. In many tribes it had been customary to have any interested member of the tribe take part in the decision making instead of having representative bodies do most of the work. It was not unusual to have secret ballots replace open voting at meetings. Although setting up "democratic" tribal governments under the IRA may have been well-intentioned, traditional and democratic Indian forms of decision making were usually ignored. As a result, on many reservations today a difference of opinion often exists between the "traditional" and the "elective" tribal meetings.

The key difference, however, between these tribal governments and similar governments in America and in other countries is that these new Indian tribal governments basically had little power. This was true for two reasons. First, as we have just learned, the Secretary of the Interior still could veto any decision made by these new governments. Secondly, most of the day-to-day decisions about roads, schools, and relief were still made by BIA administrators. Most of the important information on these aspects of daily life were still maintained in BIA files.

In reality, when a corporation or an individual approached an Indian reservation wanting to lease mining or oil rights, they quickly figured out that the real power was in the BIA, which controlled the purse strings. A visit to the local BIA superintendent was as important as approaching a tribal council. In fact, some of the new tribal councils were treated only as advisory groups to the bureau. Often the BIA agency set up a tribal council meeting to get approval for something it wanted.

Today, however, Indian tribal governments are asserting themselves more and more often. They are challenging state laws and county and town ordinances that violate or restrict treaty-given Indian rights. They are protesting the exploitation of their resources by non-Indian corporations, and they are resisting efforts of those corporations to make decisions contrary to the

wishes of Indian people and leaders. Non-Indian institutions, both government and private, are discovering that the tribal government, not the Bureau of Indian Affairs, must be listened to, dealt with, and respected.

IV. Areas of Concern

So far, we have looked at the general history that led up to the formation of elected tribal governments. As you can imagine, an interesting and often unusual history exists for each tribe, but we do not have time to go into them now. Instead, let us take a look at several concerns common to all Indian people today.

Education

In some of the westerns that you have seen, you may have run across a story in which a missionary is running a one-room schoolhouse on an Indian reservation. It is true that, when the reservations were set aside in the 1800s, part of the treaty obligations included promises that Indians would receive educational services in exchange for giving up their land. For example, a treaty signed a century ago between the U.S. government and the Navajo nation included this pledge:

> . . . The United States agrees that for every 30 children . . . who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of an English education shall be furnished.[11]

Up until the 1950s, most Native people still lived on reservations, and many of them had received their educations either from missionary teachers or in one of the boarding or day schools set up by the BIA. These boarding schools gained a bad reputation. They were run like military camps and were often so far from the children's homes that ties between them and their parents were broken. Children were usually punished if they spoke their native language at the school.

The main goal of these schools was to teach students to become "civilized" like the rest of the dominant culture. For Indian children, becoming "civilized" meant giving up their own language and speaking English and being humiliated because of their family and cultural backgrounds.

> The following are two students' reactions to their experiences: Education . . . it has separated you from your family, your heritage . . . . What more sickening life do you want? So God help me I didn't ask for this. No, I didn't.
>
> As I lay on the blanket I thought about my school days and all I had learned. I could talk like a gentleman, read, write and cipher.

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11. Short History, p. 196.

> I could name all the states of the Union, with the capitals, repeat the names of all the books of the Bible, 100 verses of Scripture, sing more than two dozen hymns, debate, shout football yells, swing my partners and tell dirty stories by the hour. It was important that I had learned how to get along with the white man. But my experience had taught me that I had a Hopi Spirit Guide, whom I must follow if I wish to live and I want to become a real Hopi again, to sing the old songs and to feel free to make love without the fear of sin or rawhide.[12]

Although efforts to improve Indian education are not being made as successfully as those to improve non-Indian education, several things have happened since 1960. Today, the fact is that over 55 percent of all Indians live in cities, not on reservations. This came about because of a need to find employment. It also came about because in the 1950s the Bureau of Indian Affairs encouraged Indian people to move to cities. Its policy of relocation was responsible for many Indians' moving from the reservations to cities.

Thus, in 1981 the remaining 200 federal schools only served about 50,000 students--only 15 percent of the total student population. About half of all Indian children today attend schools that are in cities, although the majority of them attend schools with high concentrations of Indian children.

Many of the efforts by tribal governments today go toward developing schools that actually help preserve a cultural identity for their Indian students. Although over 300 Native languages still exist in the United States today, in the majority of tribes few Native speakers remain to teach these languages to young people. Payment for training and bringing these speakers into public schools near the reservations (where many Indian students attend school) requires extra funds from the federal government. And this is only one small part of the overall problem. Most textbooks that are used in the schools contain little information on Indian history, misrepresent the Indian point of view, or ignore Indian history altogether.

Probably the biggest change since the early 1960s is the number of students attending college: it has increased 21 times since 1963--from 1,400 Indian college students to 30,000. Today there are many community colleges geared to the education of Indians beyond high school. Twenty-seven of them depend on grant funds from the BIA.

Another movement in Indian education today is the control of school districts entirely by Indian people. The majority of reservations today are still dependent on schools controlled by non-Indians. Their tribal governments must concern themselves with trying to find grant money to fund improvements in these school systems that will be geared specifically to Indian students. In some instances, things in the public schools are so bad for Indian students that

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12. Our Brother's Keeper: The Indian in White America, ed. Edgar S. Cahn, (Chicago: World Publishing, 1970), pp. 44-45.

the local Indian community has set up its own school district and Indian-controlled school board. In Wisconsin, the Oneida, Lac Courte Oreilles, and Menominee reservations run fine schools for the children in those reservation areas.

Interestingly, innovative Indian-controlled schools have also emerged in urban areas. In Minneapolis, for example, there is a school run by Indian people. When Indians first started moving to the cities in large numbers in the 1950s, many people in the Bureau of Indian Affairs assumed that this change would mean that Indian cultural identity would become absorbed into the dominant white culture. However, the opposite happened. Often, urban Indians feel that, unless they occasionally celebrate Native feasts and have pow-wows and other social gatherings, Indian values and spirituality will be forgotten and might be lost completely in two or three generations. Therefore, in cities like Minneapolis, Los Angeles, and Chicago, Indian centers can be found where much educational activity occurs in addition to that provided in the Indian schools.

In spite of numerous gains, some problems persist. Funds are always a problem; starting and maintaining a school is an expensive project. Indian teachers and administrators are hard to find, although the number is slowly increasing. Finally, fragmentation will exist as long as the Indian population is so small a percentage of the American population. There are simply not enough American Indians in many locations to be a significant factor in decision making that will really change educational programs. The typical school district near the reservation is still governed mainly by non-Indians.

Jurisdiction

"Who has jurisdiction here?" is a question that Indian groups often have to answer. In Wisconsin, except for the Menominee lands, the reservations are small and are inside county borders. Thus, questions like the following are frequently asked: "Who has the power to enforce hunting and fishing regulations?" "Does a federal, state, or tribal court try crimes that happen on these reservations?" "Who decides when the roads that run through the reservation should be repaired?" "Who has jurisdiction over the water as well as the land under the water on the reservation?"

As Thurman Trosberg, a member of the Salish-Kootenai Confederated Tribes, stated: "The question of jurisdiction, the right of the tribe to decide what shall be done, and to govern its resources and the people, is absolutely bedrock. It's the basis upon which a tribe exists. If we don't have jurisdiction, the power to control the use of and manage our assets, we have nothing."[13]

These questions are particularly important now as major mineral, oil, and water resources are being discovered on Indian reservations all over the country. One answer Indian tribes have found is to join together. For

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13. Indian Treaties: Two Centuries of Dishonor, by Rupert Costo and Jeannette Henry, (Indian Historian Press, 1977), p. 175.

example, a national organization of 37 Indian nations that produce oil--the Council on Energy Resource Tribes (CERT)--shares problems that the members have in common and works toward solutions.

Another example of Indian self-determination exists in that area of the United States called the "Four Corners," where Utah, Colorado, Arizona, and New Mexico all meet. Major uranium and coal mining industries are being undertaken on Navajo land there, and the tribal government is busy negotiating leases for the removal of these resources.

In 1976 in Wisconsin, a very rich deposit of copper and zinc was discovered in an area that includes the Mole Lake Chippewa Reservation. While white landowners in the area jumped at the opportunity to make money by letting Exxon explore their land, the Chippewa have been arguing and debating the question for a long time. They are weighing the vision of sudden, unexpected wealth against the destructive impact of mining on their other natural resources such as the availability of wild rice. This is an important decision to make and will determine the future of the entire tribe.

Another conflict to be resolved concerns the jurisdiction Indian tribal governments have over the many non-Indian landowners who live on their reservations. As it stands now, non-Indians who own land on the reservation may not participate in the affairs of tribal government. This means that they do not vote for tribal officers and may not be elected to tribal juries. This has led to numerous legal battles; however, a recent ruling stated:

> . . . [the non-Indian's] subjection to taxation and other powers of government without any right to participate in that government, appears to collide with fundamental notions of democracy and due process of law. The Supreme Court has resolved the problem by applying two basic principles: Indian tribes have authority over their reservations, and non-Indians have no right to membership in Indian tribes. . . .
>
> If tribal government is opened to non-Indian participation, it will mean the end of Indian tribes as tribes. Their identity will be lost and the political relationship between the U.S. and the political entities which have made treaties and agreements with it will be destroyed. Such a proposal is actually one to end Indian tribes and their existence.
>
> There is no constitutional right for a non-Indian to be a member of an Indian tribe. That Indian tribes have authority over their reservations and are entitled to rights, privileges and immunities not granted to non-Indians is a product of their original occupancy of this continent and the commitments made by the U.S. to them on that account. . . .[14]

In other words, the primary legal relationship between most Indian tribal governments and the United States is between each tribe and a federal agency (that is, an agency which has its center in Washington, D.C., not somewhere in

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14. Indian Treaties, pp. 177-78.

the state where the tribe lives). This legal relationship is often hard for non-Indians and especially state governments to comprehend.[15]

For example, when the Wisconsin Department of Natural Resources (DNR), the state agency responsible for dispensing hunting and fishing licenses, decides that a Wisconsin Indian is breaking the law by fishing or hunting "out of season," a jurisdictional dispute results. This means that the courts must decide if the original treaty wording, which guaranteed the Indians their rights to hunting and fishing in a certain territory, is legally more or less important than the state law, which geographically includes the reservations. Needless to say, hunting and fishing cases are still in courts all over the country.

In 1962, a Menominee was arrested for hunting out of season. The arrest took place during a time period when the Menominee Tribe was terminated.[16] The case was appealed from court to court, eventually making its way to the Supreme Court. In 1967 the Court ruled that, since termination had not clearly said anything about Indians giving up their hunting rights, these rights were still valid. Because of this ruling, the Menominees' attorneys are claiming that it was illegal for the State of Wisconsin to impose taxes on them during their termination period.

In both Wisconsin and Michigan, treaty fishing rights have been a big issue for the Chippewa on Lake Superior. The Chippewa have won the right to fish non-commercially on the lake all year long but run into opposition, hostility, and even violence from non-Indians who fish for commercial or sporting purposes.

A variation of this problem is found among the Winnebago, who never had a treaty that set aside a reservation for them and on which they would have hunting and fishing rights. Yet, the Winnebago's religion requires venison (deer meat) at ritual feasts. Through quiet negotiation with the DNR, the Winnebago got legislation passed in 1978 allowing them to hunt deer out of season. To do so, they had to agree to tell the DNR 24 hours ahead of time where they would be hunting, what methods they would be using, and how many deer they intended to kill, even though the number was rarely very large.

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15. See the teacher's transparency (Teacher Resource Sheet #8) for a simple diagram showing the relationship of Indian, federal, state, and other governments.

16. In the 1950s the U.S. Congress decided to terminate or dissolve as many reservations as possible. The Menominee reservation was one of 52 in the country that was forced to give up its Reservation status. (It was to become a county instead.) This meant that the Menominees were without tribal status for 10 years and lost many of their guarantees under the Wolf River Treaty of 1854, which created the original reservation. The Menominees worked hard to overturn their termination and, in 1973, regained reservation status.

These few cases are examples of the kinds of decisions that have been made locally. Multiply these kinds of legal actions by the thousands, and you can imagine how important and complicated Indian jurisdictional disputes are all over the country.

Economic Planning

The major problem facing most tribal governments is how to plan so that tribal members will be satisfied with the work they choose and have the freedom to continue their way of life. They also need to be assured that what little land they do have does not become destroyed by too much mining, damming, or removing of vital resources.

When most of the reservations were set up for Indians, they were traditionally in bleak areas, without much water and not sought after by white settlers. But now things have changed, and, with minerals and other resources being found on Indian land, such land is in great demand. Although one of the primary responsibilities of the BIA toward Indians has been to help them protect their land resources, the bureau has often leased out mineral rights and oil at very low prices--often without tribal members knowing that deals were being made. In fact, it sometimes seems that construction engineers and road and dam builders have an uncanny knack for discovering that the only way to get what they think must be done is to take Indian lands for their projects.

On the Menominee Reservation, where the primary resource is timber, the BIA was legally responsible for seeing to it that the forest there was cut on a "sustained-yield" policy. This meant that the trees all would not be cut but rather would be cut little by little; thus, the Menominees would be guaranteed a continual economic gain from their major resource. But the BIA and the U.S. Forest Service did not carry through on all of their responsibilities and, in 1951, the Menominees won a suit involving over $7 million dollars in damages.

At Lac Courte Oreilles, the Ojibwe people have for some years tried to get back some 6,000 acres of their reservation flooded by a dam built by the Northern States Power Company in 1921. The dam created a large lake, covering Indian homes, graves, forests, and wild rice beds. In 1971, when the 50-year lease of the company expired, the Lac Courte Oreilles tribe attempted to "take back" their land. But their action was not supported by the courts, and both the Chippewa Flowage and the reservation land remain flooded.

Other grim stories are told of tribal governments losing major resources from their reservations. For example, for six years in North Dakota, three affiliated tribes fought to save their best farmlands from being flooded by the Garrison Dam project. They lost. The Army Corps of Engineers flooded one-fourth of the reservation--the tribe's most fertile bottomlands which were the basis for the reservation's economy. The only lands left them were the harsh uplands with little water and where temperatures reach -40° in the winter. The dam formed a reservoir that divided the reservation into five unattached sections.

This disaster happened although the tribal government went to court to prevent it. George Gillette, chairperson of the Fort Berthold Indian Tribal Business Council, wept over the sale in 1948 of 155,000 acres of reservation land for the Garrison Lake and Reservoir Project. He said, "The members . . . sign this contract with heavy hearts."[17]

Today, 29 years after the opening of Garrison Dam, the reservation is still in emotional shock. Unemployment is very high. In order to re-establish old ties, tribal members travel up to 120 miles on weekends to attend reservation pow-wows, where tents are clustered along the lines of the old settlements. Before the dam project, yearly welfare payments never exceeded $5,000; soon after the project was completed, payments soared to $573,000.

Unfortunately, what happened in North Dakota is not unique in "Indian country."

Land

Today, one of the major issues facing tribal governments is what to do if one of their legal cases ends in a large settlement of money (which they will get if they give up their claims to certain lands forever.)

This question exists today in the Black Hills, where the Sioux have claimed that their sacred hunting grounds were stolen from them in the 1870s. The legal battle over the Black Hills has been in the courts since the 1920s, which means that for almost 60 years they had been trying to get a ruling on this issue.

Finally, in 1979, the U.S. Court of Claims awarded the Sioux $104 million for the 7.5 million acres that they had lost. This was the largest money settlement on record for an Indian claim. After the money was awarded, however, a group of Sioux leaders claimed they not only felt that they should get the money but that the Black Hills should also be returned to them: the $104 million would be a penalty for trespassing all those years.

In most money settlements with tribes today, if they take the money, they lose any further claim to the land. This has caused much division within the tribes. The Klamath Tribe, which, like the Menominee, was terminated in the 1950s, agreed to accept money awards for the loss of their land. As a result, they are left today without a resource base to continue their life as a community of people.

Many of these settlements go back to a controversial decision in 1946 to set up what was called the Indian Claims Commission, which was supposed to encourage different tribes to pursue their claims against the government. However, one commission stipulation was that only money settlements would be allowed.

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17. Our Brother's Keeper, p. 70.

Many tribal leaders today feel that the commission counters the treaty responsibilities of the United States toward the tribes. Such cases will probably be in the courts for decades to come.

V. The Future of Tribal Governments

It seems clear that two paths are being taken. Some tribal leaders have learned the white man's language and can talk in the economic terms found in contracts being arranged by big corporations. Such leaders have the power to sign away many of the resources on their reservations.

Others have taken a more traditional approach to the problem. This calls for a longer decision-making process among the tribe's members and often proposes alternative methods of development to the contracts being offered by commercial interests. These will probably find that their point of view is rejected not only by Washington and its agencies but especially by the local non-Indian residents, who still have little understanding of the history behind Indian's special rights.

The next time you read in a newspaper or magazine article that "big changes" are taking place on a particular reservation, look for the small print to see how many of the tribe's residents may actually benefit from the big changes.

- **Remember** that the history of all Indian-U.S. relations has involved "land grabs." The effect of American policies overall has been to reduce the land base of Indians.

- **Remember** that tribal structures and decision making have had to change in reaction to many U.S. changes in policy toward the Indians. Although these tribes were originally treated as sovereign nations, treaties signed with their leaders before 1871 were signed only with the purpose of reducing the Indian land use.

- **Remember** that in order to preserve the identity of each tribe today, its leaders are required to learn a very complicated, bureaucratic structure and vocabulary in order to figure out which agencies have jurisdiction over their land, education, health, economy, law enforcement, and welfare.

- **Remember** that often the issues of hunting and fishing or the development of Indian resources may not seem as simple as they first appear. For example, sports enthusiasts who blame the Northwest Coast Indians for "taking all the salmon" because they may fish out of season may not know the history behind the many years of heavy logging which drastically reduced the salmon runs long ago. Or when a seemingly intelligent person presents a good case for developing a native resource--such as coal--because it will bring money to the tribe, ask what the alternatives are: how much money the Indians will receive or if the Indians will have any control over their water or air quality. These are vital issues for a people whose control over its land resources may be its only key to a healthy future.

Felix Cohen, a respected historian who knew much about Indian law, gave a good explanation as to why our deep concern in the civil rights of Native people is in everyone's self-interest:

> Our interest in Indian self-government today is not the interest of sentimentalists or antiquarians. We have a vital concern with Indian self-government because the Indian is to America what the Jew was to the Russian Czars and Hitler's Germany. For us, the Indian tribe is the miner's canary and when it flutters and droops we know that the poison gasses of intolerance threaten all other minorities in our land.
>
> If we fight only for our own liberty because it is our own, are we any better than the dog who fights for his bone? We must believe in liberty itself to defend it effectively. . . . Liberty, which is the other side of the shield of tolerance, is a social affair that unites me with my fellow man. . . . We are fighting for what Jefferson called the basic rights of man. We are fighting for the last best hope of earth. And these are causes that should carry us through many defeats.[18]

---

18. "Indian Self-Government," by Felix Cohen, in The American Indian, 5(1949):12.

Tribal Name Pronunciation Clues

Cayuga	kay yoo' gah
Chippewa	chip' ah wah
Hopi	ho' pee
Iroquois	ear' uh quoy
Lac Courte Oreilles	luh coo' duh ray'
Lac du Flambeau	lack duh flam' bo
Menominee	men ah' min ee
Mohican	mo hee' can
Navajo	nav' uh ho
Nez Perce	nez purse
Ojibwe	o jib' way
Oneida	o neye' dah
Onondaga	on un dah' gah
Potawatomi	pah dah wah' dah mee
Sioux	soo
St. Croix	saint croy
Tuscarora	tus kuh roar' uh
Winnebago	win uh bay' go

Teacher Resource Sheet #9:
Guide to Student Readings/Reports

The following is a breakdown of the reading on Student Worksheet #1, showing sections and degree of difficulty in terms of vocabulary and concept load.

Section	Degree of Difficulty (1-easy 2-more difficult)	Materials Needed
One		
I. Traditional Indian Governments	1	
II. Early Relations Between Indians and Europeans	1	
Two		
III. Indian Policies of the U.S. Government		
Warfare	1	
Treaty Making	1	
Removal and Reservations	2	Student Resource Sheets #2 and #3
Three		
Assimilation	2	Student Resource Sheet #4
Four		
Reorganization	2	
Five		
IV. Areas of Concern		
Education	2	
Six		
Jurisdiction	2	Teacher Resource Sheet #8 (transparency)
Seven		
Economic Planning	2	
Land	2	
Eight		
V. The Future of Tribal Governments		

Name _____

Student Worksheet #2:
American Indian Governments—Thought Questions

1. What is the major point(s) of this section of reading on American Indian governments? _____

2. What specific examples of the major point(s) were given? (Include names, dates, places) _____

3. How does this section of reading help us to understand more about Indian governments today? _____

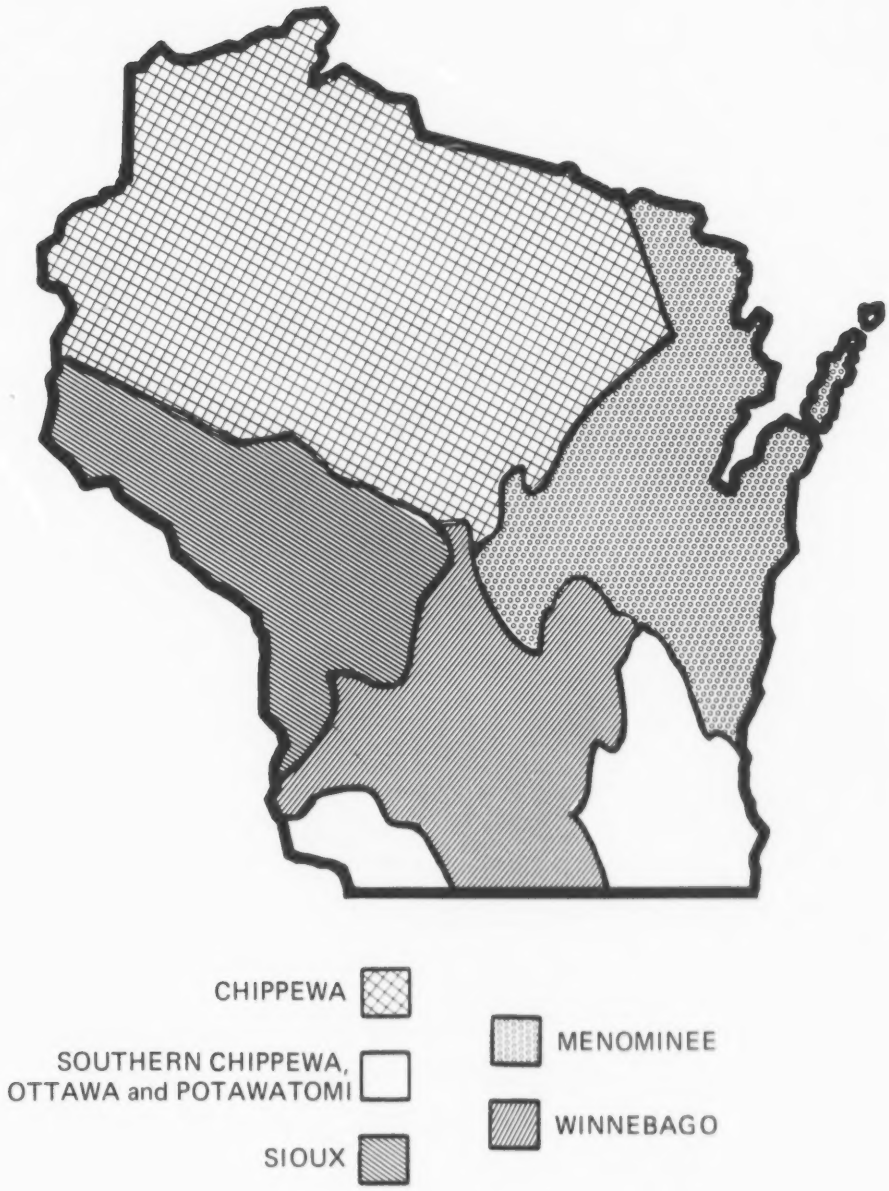
Teacher Resource Sheet #10:
American Indian Governments - Hints for Teachers

Question #1: Get students to focus on the main point or points being made in this particular section of the reading. Since they will not have read or heard about what comes before or after, they may need your help later in clarifying the main point(s) here.

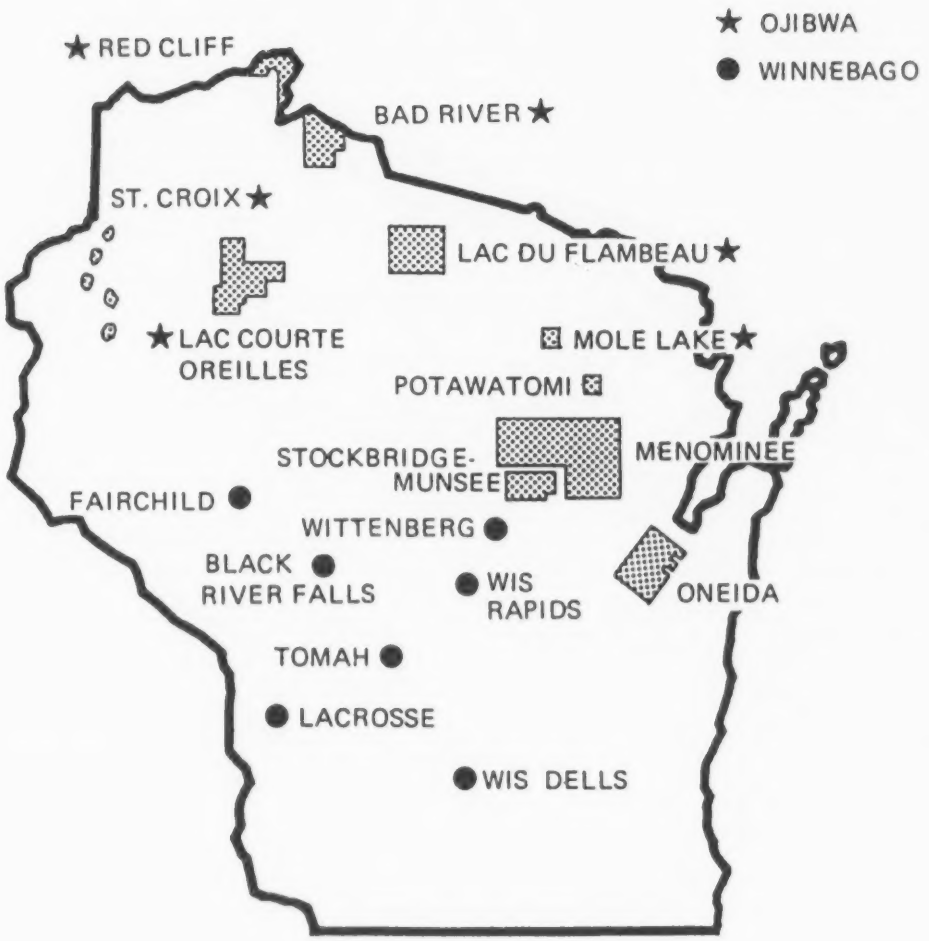
Question #2: This question is geared toward details that demonstrate, exemplify, or describe the main point. This should be easier for those students who had difficulty with #1.

Question #3: Encourage students to see the connection between the points being made in this section and the status of Indian governments today. For example, is this a problem to the Indians? Did it help to make them strong, or did it contribute to their disintegration?

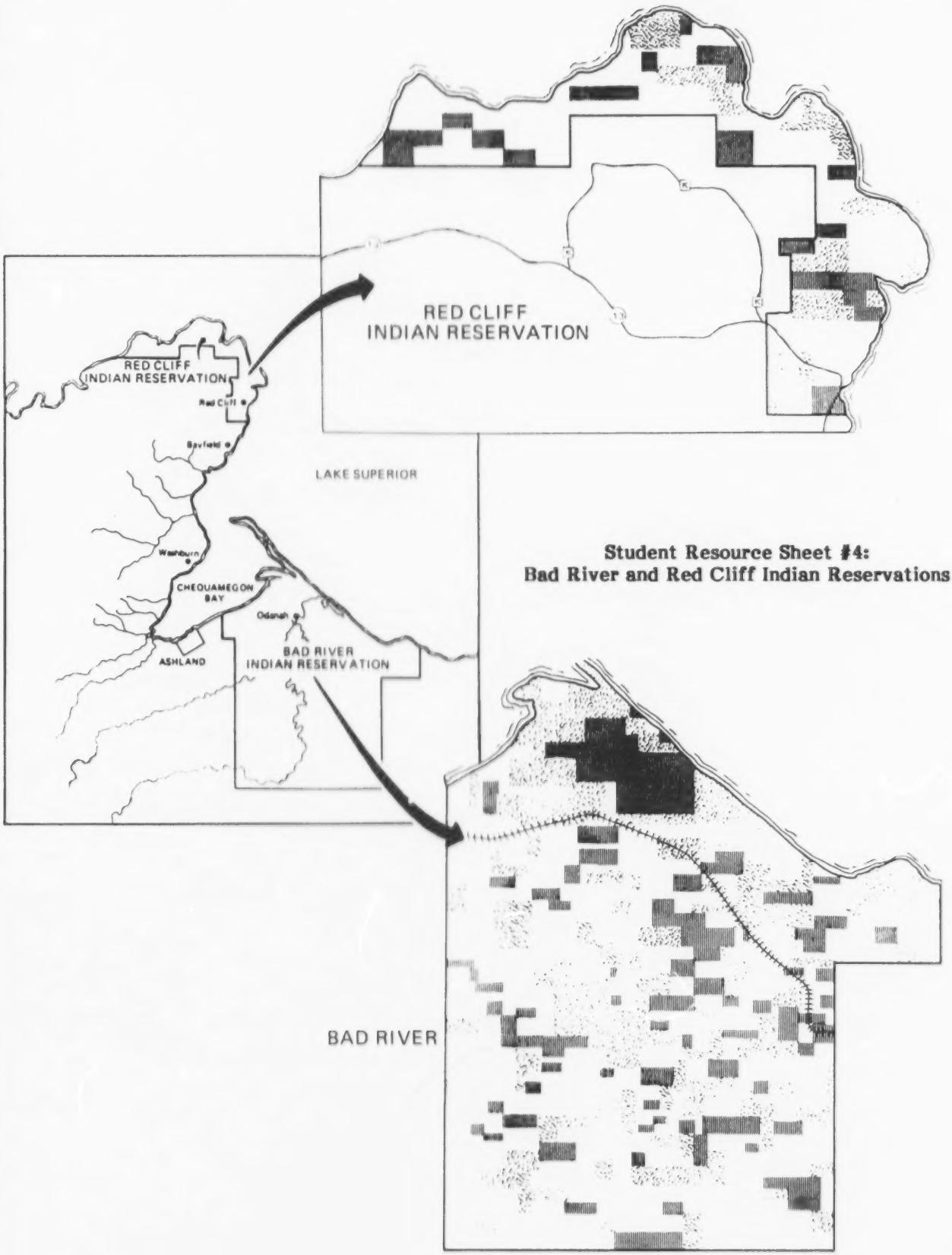
Student Resource Sheet #2:
Indian Lands In Wisconsin in the Early 1800s



Student Resource Sheet #3:
Indian Lands in Wisconsin Today



An introduction to teaching the units on the "History of Wisconsin Indian Tribes"



Student Resource Sheet #4:
Bad River and Red Cliff Indian Reservations

57

Name _____

Student Worksheet #3:
Quiz on American Indian Tribal Governments

True (T) or False (F)

____ 1. American Indian people had their own governments long before non-Indians came to this land.

____ 2. Tribal governments do not yet have the power to buy and sell their land.

____ 3. Among the Iroquois nations, women had considerable power.

____ 4. In response to the expansion of European settlement in this country, many Indian tribes formed confederacies to resist with military force.

____ 5. The main purpose of the treaties between the U.S. government and Indian nations was to enable Indian people to keep as much land as they needed.

____ 6. The removal policy strengthened Indian governments east of the Mississippi.

____ 7. Some of the Indian people who were removed from Wisconsin returned to live here permanently.

____ 8. Restoration was a government policy by which Indian people were supposed to adopt the customs and occupations of "civilized" people.

____ 9. All of the early policies of the federal government were utlimately aimed at getting Indian land.

____ 10. The Bureau of Land Management (BLM) is the federal agency that administers Indian programs.

____ 11. Tribal governments formed as a result of the Indian Reorganization Act were based on traditional Indian ways of making decisions.

____ 12. One basic weakness of tribal governments, which is being challenged by the tribes today, is the final say of the Secretary of the Interior in many matters.

____ 13. The last Indian tribe in Wisconsin to become officially organized was the Winnebago.

____ 14. The right of Indians to an education was guaranteed in many treaties.

____ 15. Early Indian boarding schools encouraged students to speak their native languages and maintain tribal customs.

____ 16. The 1950s policy of relocation was responsible for many Indians moving from the reservations to the cities.

____ 17. Tribes often get into jurisdictional disputes with state governments because of their special treaty relationship with the federal government.

____ 18. Because of mines, dams, roads, and other projects, most Indian reservations are economically better off now then they used to be.

____ 19. The Indian Claims Commission was established to encourage Indian tribes to sue the U.S. government for their land losses.

____ 20. Tribal governments have an easy job today because the issues facing them are so simple.

Matching.

____ 1.	Iroquois Confederacy	a.	discovery of gold in California
____ 2.	Wounded Knee	b.	Wisconsin reservation
____ 3.	Indian Reorganization Act	c.	Cherokee
____ 4.	Wisconsin Indian tribe	d.	agreement between two or more sovereign nations
____ 5.	Removal policy	e.	1934
____ 6.	Black Hills	f.	final military defeat of plains Indians
____ 7.	treaty	g.	Menominee
____ 8.	resulted in massacre of Indian people	h.	sacred to the Sioux
____ 9.	Trail of Tears	i.	Oneida, Seneca, Mohawk, Onondaga, Cayuga, and Tuscarora
____ 10.	Lac Court Oreilles	j.	Andrew Jackson

Teacher Resource Sheet #11:
Quiz on American Indian Tribal Governments (Key)

True (T) or False (F).

1. T
2. F - This is one of the powers these governments have.
3. T
4. T
5. F - The purpose was to get as much land as possible away from the Indians.
6. F - It caused their disintegration.
7. T
8. F - This was the policy of assimilation.
9. T
10. F - The Bureau of Indian Affairs (BIA) administers Indian programs.
11. F - Some aspects of these governments, such as majority rule and parliamentary procedure, were foreign to Indian people.
12. T
13. T
14. T
15. F - They often punished Indian children who spoke their language or did not conform to non-Indian customs.
16. T
17. T
18. F - Many such projects have drained the reservations of their resources, leaving pollution, devastation, and unemployment in their wake.
19. T
20. F - Tribal governments have a difficult job today because the issues are so complex.

Matching.

1.	i	2.	h
2.	f	7.	d
3.	e	8.	a
4.	g	9.	c
5.	j	10.	b

Teacher Resource Sheet #12:
Selected Readings on American Indian History and Government

Cahn, Edgar S., ed. Our Brother's Keeper: The Indian in White America. Chicago: World Publishing, 1970.

Cohen, Lucy K., ed. The Legal Conscience: Selected Papers of Felix S. Cohen. New Haven, CT: Yale University Press, 1960.

U.S. Commission on Civil Rights. "Indian Tribes: A Continuing Quest for Survival," a report. Washington, D.C: CCR, 1981.

The Council on Interracial Books for Children, ed. Chronicles of Indian Protest. New York: Fawcett, 1971.

Deloria, Vine, Jr. "A Brief History of the Federal Responsibility of the American Indian," based on the report "Legislative Analysis of the Federal Role in Indian Education." U.S. Department of Health, Education and Welfare, 1979.

Deloria, Vine, Jr., ed. Of Utmost Good Faith: The Case of the American Indian Against the Federal Government . . . . Los Altos, CA: Straight Arrow Books, 1971.

Deloria, Vine, Jr., and Clifford M. Lytle. American Indians, American Justice. Austin: University of Texas Press, 1983.

Lurie, Nancy Oestreich. Wisconsin Indians. Madison: Wisconsin State Historical Society, 1980.

McNickle, D'Arcy. Native American Tribalism: Indian Survivals and Renewals. New York: Oxford University Press, 1973.

Pevar, Stephen L. The Rights of Indians and Tribes. New York: Bantam, 1983.